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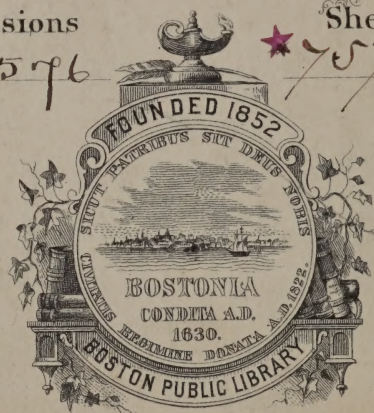
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BOSTON DAILY BEE EXTRA.

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THE ARGUMENTS

OF

COUNSEL FOR LIBELLE, HELEN MARIA DALTON,

IN THE

DALTON DIVORCE CASE,

CONSISTING OF

THE OPENING ADDRESS

OF

H. F. DURANT, ESQ.,

AND THE CLOSING PLEA

OF

HON. RUFUS CHOATE.

THE PHONOGRAPHIC REPORT OF THE DAILY BEE,

By Messrs. J. M. W. YERRINTON, and RUFUS LEIGHTON, of Boston; and Messrs.
HENRY M. PARKHURST and WILLIAM H. BURR, of New York.

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OFFICE OF THE BOSTON DAILY BEE:

MAY, 1857.

OPENING ADDRESS OF H. F. DURANT, ESQ.

May it please the Court and Gentlemen of the Jury:

At last this respondent is to be heard in her defence. Her accusers have done; and all that malice and ingenuity—ingenuity the most unscrupulous—could devise to ruin her has been exhausted;—she is now to be heard in her defence. Day after day she has been obliged to sit here, exposed to charges the most foul against herself, against her aged father and mother, until the exposure has become a pain more cruel, a torture more agonizing, than malice and ingenuity ever before invented. Now she has an opportunity to repel these charges, to expose before you the dark conspiracy against herself and against her family. But before we enter into the discussion of this question, and before I lay before you, gentlemen, the facts that will be developed hereafter in evidence, there are two or three words which must be said which are due partly to the Court, partly to yourselves, and very much to the counsel of this unfortunate young woman.

Gentlemen of the Jury, you know that I have been publicly, repeatedly, grossly charged that Mr. Dalton has applied to this Court for a private Jury trial, or for a private trial before the Court, and the counsel for Mrs. Dalton are charged openly, and publicly with having prevented that, and of thus becoming the means of bringing before the public all this mass of indecency which has been before the Court the past week. The object of that charge we all see and know. May it please your Honor, we feel it to be due to the Court, to the Jury, to ourselves, not in any cards in the newspapers, but here, where the truth or falsity of that charge is known—here with the authority of that honored gentleman with whom I am proud to be associated—here under the sanction of the judge who knows, and best knows the facts—to repel that charge and put that falsehood at rest forever.

May it please your Honor, my connection with this case has been very brief. It is only within the past sixty days that, owing to the sudden and dangerous illness of the respected gentleman (Gen. James Dana) who had charge, as junior counsel, of Mrs. Dalton's case, that I was called to the case. For myself I know but very little of the early proceedings in Court, but I have the authority of the counsel to state, in the fullest and plainest terms, that from the moment this libel was filed in court there has never been any application to your Honor for a private trial, before a jury or before the Court. I have further the authority of his experience to say, that never in the judicial history of Massachusetts, as known to him, with one solitary exception—and that, on account of the extraordinary and indecent details of the case, which would have driven even the modesty of Mary Hunter shrieking from the court—there has never been a private trial or a secret trial before a court of justice, upon a case of divorce or any other case; and if any application for such a trial had been made in this instance, there is no doubt that it would have been at once refused.

With regard to the propriety of the mode in which justice is administered in our country, by open trial, exposed to the gaze of the public, people may differ as they will. We have been accustomed to believe here, gentlemen, that whatever the details of a trial may be, it is better that all trials should be open and free; that there should be nothing in the conduct of the parties, of the counsel, of the jury, which is not open to the public gaze, rather than submit to a system of secret tribunals, such as has prevailed in other countries. On this point people may judge, and differ as they please; it is enough that our system is a system of free and open trial.

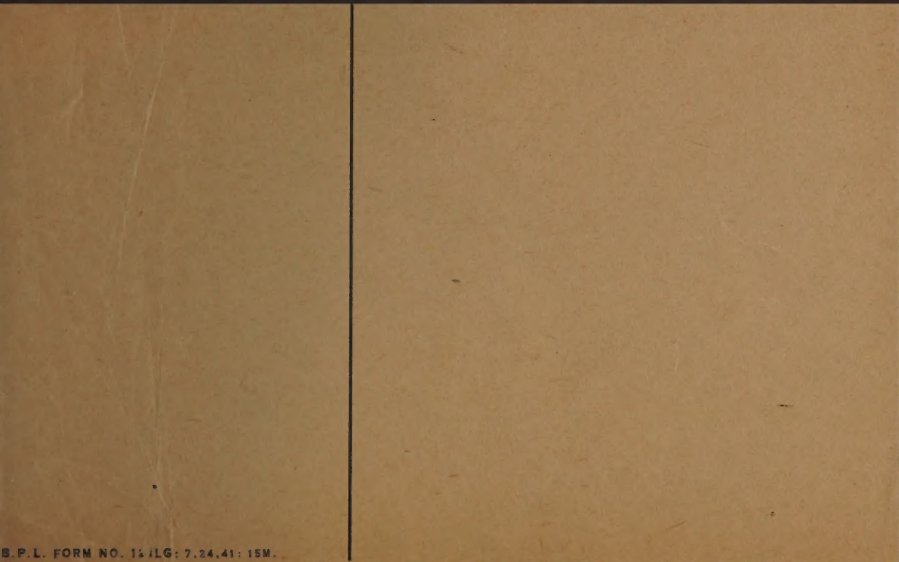
I have one word more to say. Before this case was commenced, before counsel were employed or retained—somewhere, I think, about the 11th or 12th of February, 1856, the precise date will be laid before you in a form about which there can be no dispute—about that time, the counsel for Mr. Dalton wrote a letter to that grey-haired father (Mr.

Gove) who has been the butt of the Coburns for the last year—the object of their merciful “jokes”—the counsel wrote a letter to that father, stating to him that he was instructed to apply for a divorce against his daughter, and desiring him to call at his office, to consider whether some arrangement could not be made, by which the divorce could be granted and the publicity of the evidence avoided. He did call, and was asked if he should oppose the granting of the divorce. His reply was that he believed in the innocence of his child, and he would oppose it until his last hour;—that is all. If that is what is meant by a private trial, Mr. Dalton has the full benefit of it. If that is what is meant by holding Mr. Gove and his counsel responsible, for a public trial, his counsel are fully willing to share that responsibility with him; and I appeal to you, gentlemen, if you stood in his place, as fathers, if you were asked to consent to a divorce on the ground of adultery, which would stamp your youngest child with infamy forever, whether you would not rather lay her in the dark and narrow grave, than consent to such a proposition as that. You will have to pass on that proposition, gentlemen, by and bye, and upon the rights of Mr. Gove as a father in this case; but in regard to this question, I say there is no man, no father, who would not justify Mr. Gove, who would not feel that his grey hairs could never rest quietly in the grave, if he for one moment consented to a private execution of his daughter,—a private execution in the jail yard, with only the lawful number of witnesses, rather than expose her to the malignity of the Coburns.

Mr. Dana here inquired if the counsel had concluded this portion of his address. He replied in the affirmative, and Mr. Dana addressed the Court for a few moments, referring to the early history of the case, and to the fact that a special effort was made by him to secure a hearing before a single judge. His Honor would recollect that at the time assigned, the witnesses for the libellant were ready, but that a motion for delay was made on the part of the respondent, and then that a writing was put in, he believed, the very day before the day appointed for the trial, claiming a jury. Of course, a hearing before one judge was not private, it was only more private than before a jury. After an argument before a single judge, on the ground of the character of the testimony, the Court decided that a jury having been demanded, no discretion was left with the Court, but a jury trial must be had. The jury trial having been determined upon, against his wish, he was sure that Mr. Choate would recollect that, as the trial was near, he applied to him to withdraw the demand for a jury, and allow it to go in the usual manner, to a single Judge. This application was refused. He then proposed to the learned counsel, as he could not have forgotten, to join in an application to the Court, for a jury trial in the lobby. This was declined for the reason assigned, he felt bound to say, that no Court ever would or could grant the request.

Allusion had been made to cards in newspapers.—He had written nothing for the newspapers whatever in reference to this matter; but when a journal had thrown the whole responsibility for a public trial upon Mr. Dalton, he wrote a private note to the editor—marked “private”—stating that upon inquiry he would find that at this was not correct. The editor was a personal friend, and he wrote him as a friend, and he took it there was no impropriety in this.

Mr. Choate also addressed the Court on the same subject. He said that the reason for the application for postponement was on account of the illness of Gen. Dana who had had the preparation of the case, and from whom he had not been able to receive any professional instruction. His Honor had been pleased to recognize the application as a perfectly proper one and granted it. At that time he said that he thought it proper to add, that he felt it his duty, and a most painful duty, to claim



S. P. L. FORM NO. 11 (LG: 7.24.41: 15M.)

Lesson 2

for his young client a jury trial. He remembered that he stated, that for himself he was perfectly satisfied that the case should take the ordinary course, that he dreaded the publicity of the Court room, but he remembered that he used this expression, that he should consider himself guilty of sheer professional cowardice—of which he should not be guilty—if he did not make the motion. Subsequently his brother Dana and himself had probably both exchanged reciprocal regrets that there should be a public trial, and it was very likely he, Mr. D., had said what a pity it is that we should have a public trial and a crowd of reporters; but he, Mr. C., had the honor to say that our system of jurisprudence knows nothing of dark rooms or "star chambers," or long tables covered with green cloth, and that those whom God had joined together are not to be put asunder in the dark. He had repeatedly united in applications to the late Chief Justice Wilde, and the Chief Justice now upon the bench, to be indulged in a private hearing, but those great judges, whose nerves were not too strong for their sense and their knowledge and proper administration of the law, had always replied it could not be. There had been but one exception, and that was a case which could not have been heard by any person.

Judge MERRICK briefly recapitulated the circumstances in the history of this case before the Court, stating that he had required the most stringent proof that the respondent could not be ready at the time assigned before granting a postponement; that Mr. Choate demanded a jury, which demand was reiterated by Mr. Dana, and the unavoidable publicity of such a trial was a point of objection. He decided that the statute was preemptory, and that a jury must be granted if claimed.

Mr. Choate asked the Court if an application had been made to it for a private jury trial.

Mr. Dana said the application was to the counsel to unite in an application to the Court; that being refused, an application was not made.

Judge Merrick said no application had been made for a private jury trial. He then turned to the jury and said, that having heard this explanation, all they had to do now was to confine themselves to the law and the evidence as between the parties in this case.

A recess of five minutes was here taken, and when the Court again came in Mr. Durant proceeded with his address.

May it please your Honor and gentlemen of the Jury, we have taken up too much time by the indulgence of the Court in speaking of counsel in the case, and had it not been that the matter seemed to concern the administration of justice, we should not have thought it worth while to call your attention to it. We will forget all that now. We have nothing to do now with anything but the rights and the wrongs of that young woman. I wish you now, gentlemen, to listen to the story of Helen M. Dalton's life. It is a very simple and a very brief story, until it arrives at that hour when a young woman's flattered vanity, in a moment of folly and indiscretion, led her to take a step which has become the great sorrow of her life—until it arrives at that darker hour, when the malignity of a man who should have been her brother, of a man who was her brother-in-law, poisoned the once affectionate heart of her husband, and has turned him away from his still tender and loving wife.

Helen Dalton was the youngest child of that aged couple who sit here by her side, her sole guardians and protectors, while the man who swore to love and cherish her through life, has taken this hostile position. She was born and has always lived in Boston. She was the youngest child of these parents, and her generous disposition made her the pet and idol of the home. Her simple round of pleasures and occupations, her school-mates, her father and mother, her brothers and sisters, were enough for her enjoyment and happiness. She had not gone into society; she was acquainted with but few persons, and these, gentlemen, one of the most striking and significant facts which will be laid before you in this case,

that at the very time when her beauty first attracted Mr. Dalton's eyes, on her way to and from school, at that very time she had so little of woman's vanity or woman's love of admiration, so little desire for the society of the other sex, that for six months after her beauty attracted him, he sought in vain for the opportunity of catching her eye in the street, for the purpose of attracting her notice and securing in some way a claim to an introduction. He mentioned it afterwards himself, as showing her innocence and purity, her comparative ignorance of men, and her little familiarity with the ways of the world. He sought her acquaintance; at last he was introduced to her, and they both became devotedly attached to each other. After a year and a little more, with the sanction of the parents on both sides, they were married. Looking back now, gentlemen, to that time, in the light of that experience which this sorrow has given them; both families undoubtedly, in their calmer moments, both Mr. Dalton and his wife, and their mutual friends and connections, may see in the circumstances of that marriage things which a more careful and thoughtful prudence might have checked, and so might have prevented those painful circumstances that have followed from them. It is a matter of regret, but by no means a matter of blame, that the parties were married so young. It would have been well for both parties had they been older, well for her if she had had more experience, if they had waited until she had more familiarity with the world, and was better fitted to assume the heavy duties and burdens of wife and mother. But that was not to be so. They were married, and instead of being taken to a home, to a modest, simple home, where the duties of housekeeping might have absorbed her thoughts, might have kept her out of the reach of admiration, she was taken to a boarding house—first boarding with her brother, Mr. Richardson, and then in a fashionable boarding house in Summer street. The counsel for the libellant has told you that in these early days of their marriage, Mr. Dalton was greatly absorbed in business, giving his whole time and thought to that.

Undoubtedly, he feels some regret, on looking back, that he did not give more time to his young wife, and less time to business; in that case, the consequences which have followed might have been avoided. I do not allude to this, gentlemen, as matter of blame, at all; I am only alluding to these various circumstances which show how easy it was for a young girl, taken from school to be married, a young girl who had no knowledge of the ways of the world—a young girl wedded too soon to her first lover—a young girl who had received from no other than himself the admiration which her sex may claim as a right—a young girl who did not have the cares of housekeeping to absorb her thoughts—who did not have the society of her husband, except occasionally, who perhaps thought the adoration of the lover was too soon sunk in the colder regard of the husband, absorbed too much in his business,—I state these circumstances, gentlemen, only to show how easy it was for that young child to be misled for a few moments by the admiration and worship she excited, and by her flattered vanity when this young man, who has paid such a terrible price for his folly first made her acquaintance, first admired her beauty. I repeat, that in no one of these circumstances do I ask you to blame father or mother, or attach the slightest blame to her husband. I state them only in order that, in your knowledge of human nature, when you come to measure her rights and wrongs, you may measure her as she is, and deal justly by both.

Mrs. Dalton met Wm. Sumner; the circumstances only need be alluded to. He was an acquaintance, I believe in some remote degree, a relative of Mr. Porter, who knew Mrs. Dalton's sister. He was introduced to Mrs. Dalton by Mr. Porter, he admired her, met her at saloons, sent her bouquets once or more, walked with her, rode with her, I believe also, gentlemen, it will be admitted—for we desire to conceal nothing—I believe he presented her with a volume of poems, by that amorous poet, Thomas Campbell; at least, Mr. Edward Coburn, with that very sanctimo-

nious air which distinguishes him, says he found the book to be Campbell's productions. (Laughter.) There was a good deal of levity, a good deal of what we call flirtation, folly, and then one blow was dealt, and endless sorrow.

Of Mr. Sumner, gentlemen, of his course in this matter, very little need be said. The history of his conduct has been before you. A youth not twenty years of age, attending school here in Boston—that he was guilty of folly, of wrong, may be well admitted, but for that folly and that wrong he has paid a price which will induce us all to be charitable to him for his sake and for the sake of his friends. There is a desolate home, gentlemen, out yonder among the blue hills of Milton, where a grey headed man is sitting by his desolate hearth, watching the cold grey ashes; the fire, the glow, the happiness of home, have gone. For his sake, nothing that is not necessary, nothing that is not in charity, should be spoken over Wm. Sumner's grave.

If he has been guilty of crime, if that unfortunate young woman has been guilty of crime, if that is proved, the consequences will fall upon her; if it fell short of crime, if it were folly and wrong, over that folly, over that wrong, which did not come to crime, let the veil of death be thrown.

I was pained, gentlemen, very much pained, to hear the counsel for the libellant, in his earnestness, in his indiscretion, (if he will allow me to say so) make a statement with regard to that boy, which ought not to have been made. He said that the death-bed confession of William Sumner could not be admitted here.—Gentlemen, one among the many singularly painful incidents of this trial, was this, that a gentleman well known in Boston and respected by all who know him, the brother of that boy, was called here as a witness. That gentleman was the witness of the death-bed scene of William Sumner, and watched him in his last moments. If that boy, passing down to his narrow grave, made any confession, it was made in the presence of that honorable and worthy man; and although by law that death-bed confession cannot be admitted; we here and now and always withdraw the obstacle, and the libellant, at any stage of the trial, may call that man upon the stand to tell you what his brother said with sorrow and penitence in his last hours. So much for him; we have very little to do with him; we have more to do with other. For her, gentlemen, I have only this to say: if any one of you feels there was indiscretion, she feels it too; if any one feels she was false to her marriage vow when she allowed this young man to say to her that he loved her, when she allowed him to ride with her, to talk to her, and to flatter her, she feels it a hundred fold, and she has received a lesson which to her dying hour she will never, never forget. But I say for her, more strongly than for him, whose advocate I am not, be just, but be charitable. I say, gentlemen, as man to men, now that you have tempered the current of your blood, now that the sorrows and experiences of life have enabled you to walk more coldly and calmly and temperately through the world—if you can now say nightly, as you lay your heads upon your pillows, that you can accuse yourselves of no folly, of no indiscretion, that you are not human beings, but machines, that your conduct is ever guided by prudence, by the exact rules of right and wrong—if you can say this, then judge and condemn; if you can say nightly that you thank your Heavenly Father that you are without sin—if that prayer and thanksgiving of the Pharisee is yours, I have only to say, that her's is the prayer of the Publican: "God be merciful to me a sinner." She feels, she acknowledges, more keenly than any other human being can feel, and in stronger language than any one else can acknowledge, that she has gone astray, that she has done wrong.—She is penitent, and she seeks to atone; and, gentlemen, if suffering can earn forgiveness in this world or the next, I beg to know if her sufferings have not earned for her forgiveness. After the dark tragedy which followed upon that folly, the exposure from that hour

to this—the terrible exposure of this trial—if you can say that this young woman has not atoned sufficiently for that folly, then you pass a very different judgment upon her than that which was passed by the affectionate, just and generous heart of her husband. More than a year ago he knew all this, and more than a year ago he forgave it all.

That gentlemen, was the next step in the progress of that young wife's history. Carelessly left to herself in her lodgings, subject to the influence of that indiscretion that has covered like a cloud her whole existence, that same indiscretion hurried her husband to a course which cost him exposure and imprisonment, sorrow and suffering. Then Mr. Dalton knew his wife, knew her in many hours of penitence, knew her in that hour when he compelled her to go to her family and submit to the humiliation of acknowledging there the wrong she had done—then Mr. Dalton knew it all and forgave it all, and lived with her again. The publicity and exposure which followed upon the affair of the 17th of November made it desirable that they should not go to live again at their old lodgings, but the house of Mr. Richardson, their brother-in-law, was open to them, and they lived with him until the hour when the death of that unfortunate young man caused the arrest of Mr. Dalton. The incidents of those three weeks, so honorable to his heart, will necessarily come before you. Perhaps feeling that very regret to which I have alluded, that if he had been able to give more of his time to his young wife this would have been prevented. That if he had watched over her first steps when from a child she became at once a woman, from a school girl a wife, the disposer of her own time and the mistress of her own actions—perhaps he felt this result might have been avoided; but certainly those three weeks were weeks of the most unchanged and unchanging affection, and I believe if we could look into the hearts of those two young persons, we should find recorded there, that even in the early period of their marriage, there are no days to which they can look back, in their sorrow; which were days of such deep happiness as those which followed this exposure, when the husband and the wife came together, lived together again, and were reconciled.

Then Mr. Dalton was arrested and committed to jail, with Edward O. Coburn, on a charge of murder, and remained there about a month, when they were liberated on bail. During that imprisonment in jail, gentlemen, the same state of feeling existed between these young people that existed while they were living at the house of their brother. Mrs. Dalton was tender and affectionate toward him, he was loving and tender towards her. They corresponded quite frequently, and their letters have been preserved. Those letters it will be my duty to read to you to illustrate the dark conspiracy that was afterwards arranged by a man whom we know, and to show you how completely and fully Mr. Dalton had forgiven her. Those letters were written in the sincerity of that man's heart while he was in jail. They are full of expressions of affection, warm, sincere, tender, devoted affection. There are some things in them, gentlemen, that under other circumstances might excite a smile, for few persons I suppose would like to have their confidential letters read by others than those to whom they were addressed, but I shall read them, and I trust they will be heard with no other sentiment than that of the warmest admiration toward the man who wrote them;—that is my feeling at least.

It is not true, that he discovered that his wife was unfaithful, or that she had been guilty of crime. No such thing was true. That was what I will call, for his wife's sake, one of his errors, not crimes, when he instructed his counsel to say so. Gentlemen, the last day, or the last but one, of his confinement, he wrote a letter to his wife, full of the warmest affection and frankest confidence, looking forward to the moment when he should be liberated, and telling her he expected to meet her as soon as he should come out of jail. He did come out of jail, but they did not

His wife went to his house according to appoint

but was rudely, cruelly driven from the door by his family. Gentlemen, from that time there has been a change in his conduct towards her which we can easily trace, and the motive for which we can prove, and you can understand. I do not think, I do not believe, that at the hour when he left the jail, his feelings or his motives had changed. It will appear that he was instructed by his counsel as soon as he came into free communion with them, that it was absolutely necessary that he should not be seen living with his wife, or on intimate terms with her family; they thought such a course would be prejudicial to his case. Certainly we do not blame them for this. They acted in their discretion and advised their client to take the course they thought prudent and proper. And whether it was prudent and proper, or not, we have no fault to find with them. It will be proved that that was the reason why he separated from his wife at that time.

Then came the trial for manslaughter, and it will appear to you that in that trial necessarily there was a sharp contest, angry and excited feelings, and necessarily in some degree, for the justification of Mr. Dalton, he was obliged to appear in an attitude of hostility to his wife, to justify his assault upon that young man. Taking advantage of that, gentlemen—for there was always at his ears an evil spirit ready to suggest evil thoughts, and darken his mind—taking advantage of that, his mind was gradually poisoned against his wife and against his own peace. The trial was finished, he was acquitted of manslaughter, and then after that time, as he told Mrs. Dalton and her friends, he was blamed on account of the verdict, the public thought he ought to have been convicted of manslaughter, and he said his friends insisted that it was necessary for him to apply for a divorce. The trial was finished on the 2d of February. Before he was sentenced, about the 10th or 12th of February, the first intimation was had of a change in his feelings and intentions. There had been meetings in that same mysterious chamber, which has such a convenient door, and what took place there you can readily understand when you come to know the result. Then it was that, acting upon his wounded pride, upon his excited feelings, upon what he was told was his duty to the public, (as if the public had anything to do in the matter,) he was induced to instruct his counsel to give notice of a proceeding for divorce. Then it was that commenced that dark conspiracy against this young woman, against her family, against everybody that dared to defend her, which we shall expose, and which you can trace so plainly. A divorce was to be had; but for a divorce something more was needed than indiscretions, than simple love letters, than walks and rides; there must be proof, conclusive proof, of the darkest crime of which a woman can be guilty. Then commenced the conspiracy. We are unable, of course, gentlemen, to tear away the veil and bring out to full daylight those plots, those meetings, those arrangements, but we can see some dark shadows behind the veil, some faint footsteps in the sand; we can know little of the machinery, but when you come to put the various facts together, you can as easily track them out in their devious courses, as if you had seen the whole machinery and the whole plot going on. Gentlemen of the jury, you can watch yonder clock and see the minute hand moving on its course; you cannot see the hidden machinery, and so, too, the machinery of this conspiracy is shut out from our view, yet we can track them in their devious windings until the conspiracy is consummated by such respectable and credible evidence as we have had before us.

I must call your attention, gentleman, somewhat minutely to two or three circumstances, in order to enable you to appreciate the evidence about to be in proof. Have you forgotten, gentlemen, that quite early in this trial you heard the libel for divorce read, in which it is charged that this young lady was guilty of adultery in Fera's Saloon, and that certain witnesses were called upon the stand, by whom it was shown that it was ridiculously impossible that any such crime should have

been committed there? Have you forgotten, that immediately the learned counsel rose and said, that really he had forgotten this matter of Fera's saloon; that they did not rely upon it at all; that they did not intend to press it at all; and that he thought it was rather trespassing upon the time of the Court to show that no such crime could by possibility have been committed there?

That charge, gentlemen, is very material; it lets in a whole flood of sunlight behind that dark veil. On the 11th of February, or probably some few days previous to that, Mr. Dalton and *somebody else* had made up their minds that this young girl was to be ruined for the sake of restoring Mr. Edward O. Coburn and others to their deservedly high standing in the public estimation. It was necessary that there should be proof of guilt as well as proof of flirtation, and the first plan laid was, that this scene should be laid in Fera's saloon, and that the proof should be that the crime had been committed there. That was their first plan, and if the case could have been tried at that time, it would have been no question about a crime committed in Brighton, but a question of crime committed in Fera's saloon. Immediately after the letter which I hold in my hand was written by Mrs. Dalton, he himself went to the store of a gentleman who I hope some of you may know, Mr. William Richardson, a gentleman who, whether you know him or not, will show his character upon the stand—a manly and honorable man—to converse upon the subject of a divorce. He was asked what he meant by talking about a divorce where there had been no guilt. "Oh," was his reply, "she has confessed her guilt to me;" and this, gentlemen, again I say for the wife's sake, is one of the errors, not crimes, of that man. "She has confessed that she committed adultery." "Where was it?" "In Fera's saloon." "When did she tell you?" "At the time of the flogging affair." "Indeed! if she confessed her guilt, why were you living with her under my roof for three weeks afterwards?" "Why, those three weeks were nothing." "But, why did you tell me morning after morning as we walked down street together, that you believed she was innocent, and on one occasion that she was innocent as an angel?" "Why, it was a family matter, and I did not want to speak of it." "Why did you say it was Fera's saloon, where it is plainly ridiculous to suppose such an act could be committed?" "Well, she confessed that she committed it there!"

That night, when Mr. Richardson went home, he thought so much of what had been said to him, that he went to Mrs. Dalton and told her what her husband had said, and that very night the miscarriage occurred.

A day or two afterward Mr. Dalton called again at this gentleman's store, and was told that his wife protested that she had never told such a story, and was then pretty severely rebuked for making such an unreasonable and absurd statement. You see plainly, gentlemen, that the plot was to lay the scene of the guilt in Fera's saloon, and whether Mary Hunter, John Coburn, or some of Mr. John Coburn's friends who have no Christian names, were to be called to prove it or not, I do not know. But that was the crime, and that was the place.

They had taken a false step—but these conspirators, though very adroit, may be excused for bungling in their first attempt. Even our great American sculptor, Hiram Powers, who from his little hut in the backwoods, has made all Europe worship American genius, was a little rude in his first attempts with his chisel, his first productions were not by any means models, and these gentlemen when they hatched their plot did not choose a very good scene for the commission of the act of adultery. They had made a false step from which they saw they must recede. Have you forgotten, gentlemen, that in John Coburn's testimony, and in his statement which he wrote down to swear by, he is very careful to have that meter introduced, and to enable them to fall back from that

step, Mrs. Dalton is made to say that it was true she had confessed she committed adultery in Fera's saloon, but that that statement was false, and she retracted it. They had made a blunder, and it met with a prompt rebuke from that manly brother, when Mr. Dalton told him that absurd story.

One word more bearing upon another part of this testimony. If Mrs. Dalton ever had confessed the guilt of adultery in Fera's saloon before the 25th of February, when John Coburn swears that she did confess it, it must have been when they were living together at Mr. Richardson's, after the flogging affair. Mr. Dalton said it was at the time of the flogging affair. They lived together at Mr. Richardson's until he was sent to jail, and while he was in jail he was not allowed to see his wife, except in the presence of an officer. He did not see her after the 25th of February, and therefore Mr. Dalton is placed in this position: While he was living on the most affectionate terms with his wife, either he had heard the confession of adultery in Fera's saloon, or else he and his friends fabricated that story to enable them to carry out their foul purposes. There is no escape from that. I imagine, gentlemen, when you hear what Mr. Richardson will tell you with regard to that interview between himself and Mr. Dalton, you will come to the conclusion that there must have been a very interesting conversation about that time, between these people in that *mysterious upper chamber*. Whether Mary Hunter was called in to assist or not, I cannot say. They must have felt that that story would not do. Then appeared Mr. Simpson; the locality of the crime is changed, and Mr. Simpson is the man who is to testify to the commission of the crime. Whether there is such a man who breathes the upper air, or whether he is a mythical being, who can only appear in letters, we cannot say; but it will appear that there was a new plot concocted, and that John Simpson was to have something to do with that plot. But there was a double plot, a plot within a plot, for that sweet flower, John Coburn, (laughter) was concerned in this matter, and it was not enough for John Coburn that John Simpson should be used to prove the crime of adultery, but there was a certain other purpose for which Mr. John Coburn would use him, for his own benefit. Mr. John Coburn is a mason, but that would not supply him with fifteen dollars a night for his rides, his billiard playing, and his other pleasures, and so, as I said, there was a plot within a plot.—Whether John was playing false to both parties, or to which of these he was playing false, may be hard to discover; but this Mr. Simpson was not only to prove adultery, but also to be the means of obtaining those necessary dollars which are so essential to young men about town to supply their very proper desires and amusements. The story is simply this: whether he was turning traitor to his brother or not, or whether he was partly true and partly false or whether he did not know whether he was true or false, he went to Mr. Gove, and told him there was a man named John Simpson, who was going to swear that he was at Brighton, and saw the act done. That is going a little too far, said he; "it is too bad. He lives in New York, and if I could go there, I could make it all right." Well, Mr. Gove believed it—because a young knave sometimes knows more than an old fool, and he made him a fool by that story—gave him money, and he started for Providence, taking with him somebody to write letters for him, because his hand-writing might expose him, (for John is a shrewd young man, you know.) He comes back, he sees Mr. Gove and tells him that he shall see Mr. Simpson; but pretty soon Mr. Gove thinks a little, turns matters over in his mind, and is satisfied that it is all a humbug, and will not give John any more money, and tells his mother about John—it is a singular weakness in him to suppose that his mother would have any influence over a young man of spirit like John. Mr. Gove goes and tells his mother, and then John goes to the Tremont House and the Parker House and writes letters in the name of John Simpson, to get Mr. Gove to come and see him. You have heard the story that he was hired to

go to New York, because the trial was coming on.—He has given the date, the 25th of March. It will appear in evidence from the record that up to that day Mrs. Dalton had not appeared in Court. The record will show that she was not allowed to appear until the 31st of March,—that there could have been no Court, and of course, that there could have been no assignment. You will judge whether or not, under such circumstances, Mr. John Coburn was hired to go away because the case had been assigned.

Well, gentlemen, the plot progresses somewhat. The matter of Simpson was not given up; I doubt, gentlemen, it is for you to judge, whether it was given up until sixty days ago. John Coburn was certainly often at the jail accompanied by a man whom he spoke of as Baker and as Simpson. Whether he had talked and thought about Simpson so long that he mis-called his friend's name or not, or whether he intended to have him personate Mr. Simpson or not, you must judge;—we shall lay the fact before you. Matters progressed until the date of my first connection with this case, when Mr. John Coburn's deposition was taken, and then the interesting Mr. Coburn was examined at great length, this matter of Simpson came out, that part of the plot was exploded and they were obliged to rely, not upon such evidence as that, but upon evidence within their own borders.

This evidence is from three parties—Edward O. Coburn, John Coburn, and Mary Hunter—by whom this charge of criminality is sought to be established. With regard to these witnesses, we have some evidence, and very decided evidence, to lay before you. I need not call your attention to the nature of the evidence, which consists of confessions pretended to have been made always made under such circumstances that there was nobody else except the witness to hear them. We cannot produce anybody who was present when Mary Hunter received that astounding information from Mrs. Dalton about looking under a bed in a room where there *never was a bed*. So with Edward Coburn; he takes great pains to tell us that nobody was present beside himself when that pretended confession was made to him. So with regard to honest John—there was nobody to keep him company in his honorable action of listening at that door from four and a half o'clock until nine, as his aunt says he did.

I shall have the pleasure of laying before you two or three facts with regard to these witnesses which are pretty decisive. Some time within the last six months Mary Hunter was accidentally seen going into Mr. Dalton's store. This fact came to the knowledge of Mr. Richardson. That day or the next she called at Mr. Gove's house, and was talking with the family when Mr. Richardson came in. Mr. Richardson said to her, "I understand you have been to Mr. Dalton's store." "Oh yes," said she, "I was passing by, and Mr. Dalton invited me in. He treated me very politely, dusted a chair for me, and I sat down." "Then," said Mr. Richardson, "I suppose he is going to summon you as a witness." "Oh no," was the reply, "I told him I did not know anything about the case, except that Mrs. Dalton went to ride with Mr. Sumner. I am willing to say that to you now." Mr. Richardson said he still believed she would be summoned as a witness. "Well," said she, "if he does call me as a witness, I shall tell something about him that will cover him with shame forever." That is the story Mary Hunter told six months ago. Her story has grown somewhat since then—since that story about the adultery at Fera's saloon, which they thought so conclusive, has turned out not to be so. Still more than that, we shall be able to show to you that even more recently, Mary Hunter speaking of the divorce case, said that she believed that the "creature" was innocent—speaking of Mrs. Dalton. Of course she could not have had any intimation then about her looking under the bed, for that would not look like innocence. So much for that impersonation of all that is lovely in womanhood—Mary Hunter.

I do not think it is necessary to take up much time

in talking about John Coburn, except in reading his deposition. He has gone to his grave, and has been followed by quite a crowd of witnesses *without Christian names!* (Loud laughter.) Nobody will strew flowers daily on his grave, unless it be Mary Hunter. (Renewed laughter.) Of these witnesses enough.—There is another part of this case requiring more attention in my opening—a part of the case more extraordinary and more base than ever came before a court of justice. They have charged here upon Mrs. Dalton, and upon her father and mother, that Mrs. Dalton, having been guilty of adultery with Wm. Sumner, to conceal the crime and its consequences, she, by the advice of those parents, committed the other highest crime—procured an abortion and murdered her child, that the proof of her guilt might be out of the way. That is the charge, gentlemen, made, urged, and attempted to be proved, with the most Satanic malignity that was ever known in a court of justice. Never before did you hear or know of a plot parallel to this, where the attempt was made not only to destroy a young woman, but in one grave to bury a whole family. And from whom does that charge emanate? Among all the incidents of this trial, painful, loathsome, shocking to human nature, there is nothing that parallels the scene which took place on that stand in your presence. That respected woman, Mrs. Dalton's mother, day after day, had sat by her daughter's side. On the stand stood her son, Edward Coburn—the man to whom years ago she gave her child to love and cherish—the man who made her by that tie his mother—that mother, one of the most inoffensive and mildest persons, as you will see at once when you see her upon the stand—the last person at whom such a malignant blow should have aimed even by the hand of such a malignant man. He told his story. He charged this crime upon Mrs. Dalton, and connected her father and mother with it. Then he was cross-examined upon that subject. It was the most striking scene I ever witnessed in a court of justice. He was asked if it was true that that lady, his mother, had been guilty of that crime, and then, pausing an instant, like a serpent coiling his folds, came one deadly hiss—"Yes, it is true; she has done it six times before." Was there ever perjury which was not accompanied by folly? The very enormity of the statement carried its refutation with it. And then the fool, after cross-examination, comes back and says, "I did not mean six times exactly, there was only twice that I remember when the attempt was successful." The charge, gentlemen, against that lady is connected with Mrs. Dalton. We shall have Mrs. Gove and her family upon the stand, and you will judge whether it is true or not that this crime has been committed. I say, gentlemen, that it is not necessary to go into much evidence upon that point, except to illustrate the malice of this party, because day by day the case has been fading away, until now it is acknowledged, or rather proved, that child was Frank Dalton's, so that the motive for the crime which was said to have been to conceal the consequences of adultery with Wm. Sumner, is taken away, and now it is alleged that the reason given by this father for violating his daughter's person, for taking away that young life as it lay under its mother's heart, was that Mr. Dalton might refuse to acknowledge the child, and thus bring it to shame.

We shall exhibit to the Court the fullest proof—proof which the libellant cannot deny, for it is under his own hand—that long before this, Dalton knew of the pregnancy of his wife, knew it was his own child, acknowledged in his letters that it was his own child, and so what motive could there be, may it please your Honor, to conceal the fruits of crime when the husband acknowledged it was his own child? What motive for Mr. Gove to say that the child would be dishonored by his father's denial, when they had his own father's hand acknowledging the child? In his letters he was sometimes joking his wife about making baby clothes, sometimes guessing about the sex of the child, sometimes speaking of it as "our child." Gentlemen, the

strangest thing of all in this charge is that the first hint on which these conspirators acted was contained in the letters of Mrs. Dalton to her husband, which they have not chosen to produce and lay before you. It happened in this way. I believe it was about the last of September or the 1st of October, Mrs. Dalton became pregnant. Mr. Dalton knew of it before he went to jail, and before the flogging affair. After he was arrested and taken to jail, Mrs. Dalton, as we can well understand, was much affected. She was sensitive, she devotedly loved her husband, and one of the saddest things in this case is, that at this hour, the Being who can read those two hearts knows that they tenderly love each other, and if they could be alone, away from the influences of family and friends, there would be no need of a separation, no need of a verdict of "not guilty" at your hands, to seal their re-union. Then, as might be expected, her agitation in the last of December brought on the pains which to her mother's experience although not to her, indicated danger of miscarriage. Her mother knew the symptoms, knew the danger; in the last of December, shortly after the arrest of Mr. Dalton, her mother, to relieve her danger, gave her what she had been accustomed to use herself—what is called a composition powder, and some foot baths—not a powder intended to produce abortion, or which could produce it, but a powder given, I suppose, to relax her system, and relieve her from the danger which threatened her. That was in December. The symptoms passed away, and she got well. Sometime between the 1st and 12th January, Mr. Dalton had said something to her which she thought unkind, something that he explained afterwards, that brought on agitation, and again she was attacked with those pains, and she wrote to her husband, telling him she had taken those powders; perhaps, in her inexperience, she may have called them preventive powders; perhaps, in her inexperience, she thought they were to prevent her from having a child. Three times she had those attacks before her miscarriage. Each time these remedies were given. At the time of the fourth attack similar remedies were given, and she had her feet in a foot-bath, when her brother, Mr. Richardson, came to the house to inquire about the story Mr. Dalton had told him. That night the miscarriage took place. The child was born in the usual natural way; and you will have the proof that this story of the abortion was not only ridiculous, but a foul fabrication. She never saw Dr. Calkins; she never consulted Dr. Calkins: she never knew Dr. Calkins.—No physician was called in at that time. You all know that this matter of miscarriage is a delicate thing which very many women are unwilling to talk about, and that very often physicians are not called in such cases. No physician was called in until it was found that her pregnancy was so far advanced that her breasts were full, and she suffered that most cruel torture that falls to the lot of woman, consequent upon broken breasts.

This is the whole of our story, gentlemen, and I believe you will appreciate the evidence we have to offer. But before I close I have Helen Dalton's own defence to make—her own answer to this charge. May it please your Honor, it is an answer which to my mind is worth, a thousand times, all that can be said or proved by counsel and witnesses.

You remember, gentlemen, that her brother, Edward Coburn, told us on the stand, that this letter, which I have in my hand, was sent by Helen Dalton to her husband while he was in jail. It was sent after the proceedings for a divorce had been commenced. And you remember that Edward Coburn swore that he read it to Frank Dalton, and that Frank said it was not Helen's composition. He never uttered that word! That it was said at that very time, I have no doubt; but it was said by Edward Coburn—Frank Dalton's heart would never have allowed him to say that word, if that letter was read to him. Not her own composition! *Gentlemen, when you read this letter, as you will by and by, you will have no doubt

in the matter. It is full of errors—errors of spelling, errors of punctuation, errors of grammar—but no errors of the heart! Not her own composition! Why, all the authors of America could not compose that letter! Bring me a poor, fluttering, wild bird, caught in his native woods, and his captive heart trembling as though it would burst through its sides, and then bring me the cunning artist who will make that heart, and teach it to flutter—bring me the man of immortal genius, who could write that letter, and I will give the starry crown to him. Not her own composition! Frank Dalton never uttered that word! If he had trusted his own heart, instead of trusting the dark serpent that had coiled and coiled around him until his bet-

ter nature gave place to evil thoughts and evil passions, he would have felt his wife's little heart fluttering and palpitating there. It was written, gentlemen, partly on the day this libel—truly in his case called a "*libel*,"—had been served upon her, and partly the next day, when she was sick, when she was suffering from that keenest agony that woman can suffer. It is dated the 15th March, 1856.

Mr. DURANT was proceeding to read this letter, when Mr. DANA objected, and the Court sustained the objection, remarking that he did not think it would be in accordance with the regular course to read the letter as a part of the opening.

Mr. DURANT.—The opening is closed.

CLOSING ARGUMENT OF HON. RUFUS CHOATE.

TUESDAY, May 5.

Long before the hour assigned for the opening of the Court, the several avenues were crowded with an anxious multitude, eager to obtain admittance, hundreds of whom were disappointed. Sheriff Clark and the officers of the Court did everything in their power to accommodate the importunate applicants, and bore with commendable patience the oft-times too pertinacious demands made upon them.

The parties to the suit and their friends were early in Court, and at 9 1-2 o'clock Judge Merrick took his seat upon the bench, and Mr. Choate commenced his long-expected argument in behalf of the respondent.

ARGUMENT OF HON. RUFUS CHOATE.

I desire to the ask attention of the Court to Bishop on "Marriage and Divorce," sec. 423, and the note,— "When the facts relied upon are equally capable of two interpretations, one of which is consistent with the defendant's innocence, they will not be sufficient to establish guilt."—Ferguson vs. Ferguson, 3 Sandford, 307. Also,—and this is of considerable importance in conducting a commentary on letters, to the 2d of Haggard, p. 201:

"The letters have been much examined and commented upon. I have read them over and over again; but I do not intend to follow the counsel in their comments. They are written in an ardent and romantic strain; Bushe, soliciting interviews for criminal purposes, for it is impossible his object, in thus addressing a married woman, could have been other than criminal, or that when a married woman receives such letters from a married man, but that she must know they were for licentious purposes. Still, however, some women will go a great way without proceeding to the last extremity of guilt; and the Court must be satisfied, not only that there has been a surrender of the mind, but of the person. It has been argued, that these letters show that actual guilt had passed; but on reading them, and after the argument, I think they contain no unequivocal reference to, nor inference of, any act of adultery committed. The parts relied on are capable of explanation though attended with much suspicion; and when the oral evidence has entirely failed in establishing the offence, and no occasion can be pointed out when adultery was actually committed; and when even these letters do not refer retrospectively to meetings at any particular time or place, it would be too much to say that such equivocal documents can be admitted as sufficient and conclusive proof.

"The letters seem to show that she had consented to an interview, and had promised that she at last would meet him at the Pavilion. They are, as already observed, strange, extravagant stuff, breathing the most ardent affection, and soliciting interviews, written by a profligate libertine, professing something like an honorable attachment to a weak, vain, silly woman; he a married man and she a married woman. It was highly blameable on her part to allow this correspondence, but it is hardly possible, considering the profligate character of

the writer, but that they would have contained some strong and unequivocal reference to an adulterous connexion having previously taken place, some more direct and more gross allusions to past criminality, if she had surrendered her person. I do not go so far as to say that they negative adultery, but coupled with the want of oral evidence, they do not sustain the charge."

MR. FOREMAN AND GENTLEMEN:

I congratulate you on *approaching*, at least, the close of this case, so severe and painful to all of us. One effort more of your indulgence I have to ask, and then we shall retire from your presence, satisfied and grateful that everything which candor and patience and intelligence can do for these afflicted suitors has been done. It very rarely indeed happens, gentlemen, in the trial of a civil controversy, that both the parties have an equal, or, rather, a vast interest, that one of them—in this case the defendant—should be clearly proved to be entitled to your verdict. Unusual as it is, in the view I take of this case, such an one is now on trial. To both of these parties, it is of supreme importance, in the view I take of it, that you should find this young wife, erring, indiscreet, imprudent, forgetful of herself, if it be so, but innocent of the last and greatest crime of a married woman,—I say, to both parties it is important. I cannot deny, of course, gentlemen, that her interest in such a result is perhaps the greatest of the two. For her, indeed, it is not at all too much to say, that everything is staked upon the result. I cannot, of course, hope, I cannot say, that any verdict which you can render in this case can give her back again the happy and sunny life which seemed opening upon her two years ago;—I cannot say it, because I do not think that any verdict you can render will ever enable her to recall those weeks of folly, and frivolity, and vanity, without a blush, without a tear;—I cannot desire that it should be so. But, gentlemen, whether these grave and impressive proceedings shall terminate by sending this young wife from your presence with the scarlet letter upon her brow—whether in this, her morning of life, her name shall be thus publicly stricken from the roll of virtuous women, her whole future darkened by dishonor and waylaid by temptation, her companions driven from her side, herself cast out, it may be, upon common society, the sport of libertines, unassisted by public opinion, or sympathy, or self respect—this certainly rests with you. For her, therefore, I am surely warranted in saying, that more than her life is here at stake. "Whatever things are honest, whatsoever things are lovely, whatsoever things are pure, whatsoever things are of good report, if there be any virtue, if there be any praise," all the chances that are to be left her in life, for winning and holding these holy, beautiful, and needful things, rest with you.

I cannot, therefore, with my impression of the importance of this inquiry, turn away from her even to these parents, whose hearts are bleeding also. But is there not another person, gentlemen, interested in these proceedings with an equal, or at least a supreme interest with the respondent, that you shall be able by your verdict to say that Helen Dalton is not guilty of the crime of adultery, and is not that person her husband? I do not say, gentlemen, that he ought to feel or would feel grateful for a verdict that should acquit her on any ground of doubt or technicality, leaving everybody to suspect her guilty—I do not say that he would feel contented with such a verdict as that, though I say it would be her sacred right that such a verdict should be rendered, if your minds were left in that state. He must acquiesce, whether the verdict is satisfactory to him in that particular or not. But, gentlemen, if you can here, and now, on this evidence, acquit your consciences, and render a verdict that shall assure this husband that a jury of Suffolk, men of honor and spirit, some of them his personal friends, believe that he has been the victim of a cruel and groundless jealousy, that they believe that he has been led by that scandal that circulates about him, and has influenced him everywhere, that he has been made to misconceive the nature and over-estimate the extent of the injury his wife has done him,—if he could be made to believe and see, as I believe you see and believe, and every other human being sees and believes, that this story of abortion, by which he has been induced to institute these proceedings, is false, that the coinage of hell—if you can thus enable him to see, that without dishonor he may again take her to his bosom, let me ask you if any other human being can do another so great a kindness as this? If by your verdict you can assure him that his first thoughts on this subject were right, that the steadiness and constancy with which he held her to his heart from the 17th of November down to the morning of the 26th of February,—the steadiness and constancy with which he held her to his affections, after he became aware of every credible fact and circumstance that has been put in evidence in this case, if you can teach him that this steadiness and constancy were just and honorable and true; if you thus restore him to his former and better self, before he was maddened by these falsehoods, and this malignant conspiracy by which he has been surrounded,—will it not be he, rather than she, that will have occasion to bless you for your judgment?

Sensitiveness to public opinion, if I understand the character of Dalton at all, is what has misled him; it is other men's judgments, not his own, which have led him to this proceeding; it is through others eyes, not his own, that he has looked; and now I submit that if you can only assist him to follow in the impulses of his own heart without dishonor, permit me to say, you may live long and do much, but, to no human being can you do such a kindness as this.

"Not poppy, nor mandragora,
Nor all the drowsy syrups of this world
Can ever med'cine thee to that sweet sleep
That thou ow'd'st yesterday."

It seems to me therefore, gentlemen, if my learned friend on the other side will not deem it arrogance in me to say so, that I am here to maintain the cause, not of the wife against the husband, but of both of them. I am here to say, that the husband has a right to his wife, and the wife has a right to her husband. What is their case, gentlemen, as it now rests, in my own mind at least, and I trust in yours, as far as the result is affected by the whole evidence now before us? Permit me to state that case exactly as I apprehend it; and when I have done, that I shall be obliged to turn a little more particularly, and more methodically to what the libellant has to prove and by what evidence he has attempted to establish it; but first let me give you the position of the case as at last it rests. I hope upon your minds, certainly rests upon my own.

These parties were married in June, 1855; he was very young, I believe not more than 22 or 23 at the

time, and he was only not a child, not yet eighteen, at school as late as the January previous, which she left in consequence of her engagement, and to make preparations for her marriage. She was comely, of remarkable modesty, on the testimony of Dalton himself and of Mr. Richardson, affectionate and fond in her nature and disposition, a little quick sometimes, as has been testified to, but instantly herself again, and instantly hastening, whenever a momentary difference had occurred between herself and her husband, to make all up by throwing her arms around his neck—herself making the approach to a reconciliation. She was the child, I hope I may be allowed to say, notwithstanding the testimony of Mrs. Joseph Coburn given here yesterday, of respectable, christian parents, somewhat beyond the middle of life, their youngest and not their least beloved, and they had been diligent to afford her all those opportunities of education, moral and mental, which our Commonwealth offers to all its daughters, and they had afforded her, what perhaps is of more importance to remember here, the still more inestimable privileges and blessings of the family altar and worship, and a christian, constant parental example. This was Helen Dalton that day—pure as the falling flake of snow, pure as any child, as any bride, that was ever given in marriage at any altar. They began their married life by living at a grave and decorous boarding house of the first class, Mrs. LeCain's in Summer street, full of servants, full of boarders, and of the highest respectability in all particulars; they were affectionately fond of each other, and there was never, in the history of married, bridal life, a happier beginning. Such is the universal testimony in this case.

About the 20th or 25th of September, she became, or knew herself to be, pregnant; the father of that child, beyond a particle of controversy, was her lawful husband. This was the last of September, a month before she ever saw young Sumner, two months before that ride to Brighton or Watertown, previous to the outrage on Shawmut Avenue, where, if at all, they are to locate the crime. It happened, as has been stated by counsel on both sides, in the opening, that not being at house-keeping, and her husband necessarily, and without the least fault on his part—creditable rather to him—detained from home about his business, she was very much alone, and had very little to do, and having a sister very nearly her own age, and a very respectable friend, Miss Snow—to whose deposition, given so long ago you may have forgotten it, I shall have occasion to revert—having friends as pure as she was then, she was, in that pleasant waning summer, and beginning of autumn, very much abroad. I hope I shall be excused for saying to the married men upon the jury, that the very restlessness of incipient pregnancy may have induced a desire to be abroad. It was during this time that she made the acquaintance of young Sumner, whose name, from his connection with this case, recalls many sad thoughts and memories of the disappointed hope, that cluster about him and rest upon his grave. He also was nothing more than a boy, with some capacity, I may say, for refinement of sentiment, a certain pleasing address and manner, with some susceptibility of disposition—not that he was debauched or dissolute—for his friends' sake I thank God there is not a particle of evidence that he was a seducer by profession or design, only that once or perhaps twice he was hurried away by impulse into the offer of a familiarity, revealing a warmer and more ungovernable sentiment, which was instantly repelled, and instantly and forever abandoned. If evil into that immature nature came and went, as evil will, it perished in the blossom, and bore no fruit.

Gentlemen, my learned brother, in opening his case, was pleased to say that he was not at liberty, by the rules of law, to give in evidence certain imaginary confessions made by young Sumner on his death bed. My learned brother will excuse me for saying that he has not been quite so scrupulous in the offer of inco-

petent and inadmissible testimony, as to warrant a belief in it here. But lest there should be any, you will remember that my associate, after consultation with myself, in his opening argument, challenged the learned counsel—pledging us to waive every objection on the ground of incompetency or the order of trial—challenged him to produce the brother of Mr. Sumner, who hung over his dying bed, and received his last words. The witness was before you, gentlemen, called on two or three comparatively unimportant points in this case, and constantly under the eye of the counsel on the other side. We challenged him to produce him, to say whether or not, in that last hour, in that moment of unutterable solemnity, just when he was passing into the presence of the All-seeing One, he went out of the world confessing or denying that he had committed this act. Gentlemen, let the fact that my learned brother has not ventured to meet this challenge, go for the proof. Men may live fools, but fools they cannot die.

Well, gentlemen, this acquaintance began the middle of October; I pray you, as I may not think it worth while to spend time to recur to it again—I pray you take it here, that there is not a scintilla of evidence that she ever saw him in her life until the middle of October. She was then pregnant by her husband six weeks. What the nature of their acquaintance was, so far as it consisted in outside, visible evidence, I think we have been able to lay before you exactly. They met occasionally in the streets; sometimes at Fera's and Vinton's saloons; I think we hear of two rides in omnibuses, in which were all four, (Mr. Sumner and Mr. Porter, Mrs. Coburn and Mrs. Dalton,) the omnibuses full of passengers; they drove once to Cambridge, in a carriage, according to the testimony of the driver Burns, four together, the windows all open; and once only rode out alone. That she was ever out walking with him after the sun went down, that they ever met, but in the broadest daylight, that he ever insulted or astonished her by an invitation to a house of assignation, that they ever met any where but in the broad light of day, but in the presence of everybody, except on the single occasion of the ride to Brighton, there is not a particle of proof. I advert now to the deposition of Miss Snow. Perhaps you have forgotten that they asked that respectable witness, called by themselves, whether she ever knew or heard of Helen Dalton's going with Sumner to a house of assignation, or a house of pleasure, and she denied that she had ever heard or known such a thing in her life. Therefore I have the honor to repeat, in order that we may not exaggerate the matter, and may have the whole of this part of the cause before us,—I say I have the honor to repeat that these interviews, Mr. Foreman, were no walky dusk or moonlight, no meetings by the insidious and seductive light and music of the house of pleasure, no walk, no meeting, any where, on any occasion, alone, but a single ride on the 15th or 16th of November.

Gentlemen, of this intimacy between Helen Dalton and Mr. Sumner, I hold the same opinion with regard to it, that the father expressed through his tears upon the stand. I look upon it with abhorrence. I regard it exactly as Helen Dalton everywhere, in every word she uttered in every line she wrote, whenever her bursting tears enabled her to speak her thoughts, shows that she regarded it. But we are here on a charge of adultery, and I have the honor to submit to you, gentlemen, after the most careful and thoughtful consideration and weighing of evidence in this case, under responsibilities professionally as severe and as oppressive as those under which I ever assisted to try a case in my life—I respectfully submit, on a review of that evidence, these two views will have the approbation of every candid mind. I submit that she never came to love young Sumner with that impulsive, absorbing, engrossing love that endangers virtue and conquers shame; I submit, also, gentlemen, that there was never a moment, during their whole intercourse, when the thought of criminal connection was entertained by her for a moment—never one. Young,

comely, vain, as may be with her sex and in her condition, in her father's family, trained to but little intercourse with the world, the society and pleasing manners of this young man tickled her, afforded her pleasure, playing round the head, but going not near the heart. But I mean to maintain, and I shall base the defence, a triumphant defence, in this case, unless I deceive myself, upon it; that her husband had her heart at first, and has it to-day; that this attachment (if you please to call it so) was merely a transient and superficial feeling, a false, fickle light on the surface of the stream, whose depths were unchanged, untroubled, undisturbed. How well she loved him, we shall see, if you will permit me to go a little into the argument of the cause. The whole case is full of evidence to show the affection of the earlier period of their married life. There are the three weeks after the Shawmut avenue tragedy; those two days when, during those three weeks, her husband having absented himself, she knew not why, she went for him, half distracted, everywhere, going at a late hour in the evening to his mother's house; her following him to jail, hovering about that cell, a beam of light, a dove of constant presence; those letters, in the whole history of the human heart there is nothing to equal the depth of feeling, the beautiful, inexpressible, undimmed affection they exhibit, down even to the very last, in which she breathes out the thoughts of a breaking heart;—how well she loved him from the first, how constantly she loved him through the whole, and how light and transient and superficial was this intimacy with Mr. Sumner, I shall have the pleasure by and by, of stating my opinion.

I say, also, for the second view of this intercourse between her and Sumner, that it is beyond all reasonable controversy, that the very first time that Sumner suffered himself to be hurried away by a momentary impulse into expressions that revealed the existence of warmer desires, she instantly met and instantly repelled them. Will you ever forget, gentlemen, that only a day or two before the Shawmut Avenue tragedy, having discovered, by it may be, a touch of the foot or of the hand, the existence of these warm emotions, she thereupon repelled him, snatched her letters from his hands, tore them up, and threw them out the window? Have you forgotten that one of the letters of Sumner to her was never opened by her, but found unopened? Well did Dalton comment upon that fact when he said to Mr. Richardson, she could not much have loved him, to have left his letter unopened. And I submit to you further, gentlemen,—the evidence will show you whether I am warranted in these strong introductory statements—that when at Brighton or at Watertown, he, probably for the first time in his life, distinctly conveyed an intimation of his wishes, how she started back from him, burst out crying—on the testimony of Mrs. E. O. Coburn, their witness, and to be believed by them—and commanded that he should instantly drive her home again to Boston.

The letters were found; the Shawmut Avenue tragedy was enacted; Sumner was brought into her presence and made certain statements. The next Sunday night, in the presence of the Daltons, of whom I am bound to say,—although they have, perhaps with the best motives towards their kinsman, perhaps intentionally and perhaps unintentionally, urged him to this proceeding,—notwithstanding this. I have the greatest pleasure in saying, that they stand out in extraordinary comparison, as a family of witnesses and of blood, with that other family which figures so largely, and, as I shall show you by and by, so disgracefully, in the case. In their presence, on the Sunday night after the tragedy, she made a full and complete revelation of her way of life with Sumner, in the presence of her husband, and of his family; admitted there, as every where, her own grief, shame, and compunction for what had taken place, but protested her absolute innocence of the last and greatest crime,—just as she had once before, when Dalton proposed that test, sun

down on her knees, with her hand on her father's gift, the Bible, and solemnly swore her innocence of that charge; just as she had, in that even more solemn moment, when the pains of premature birth were upon her, in the presence of Mr. Richardson, adjured her Maker that she was innocent.

This brings me to that great fact, which I apprehend you will believe to be decisive in the case, that the libellant, with the knowledge of every single credible fact and circumstance which is laid before you in this cause, and with the full and perfect knowledge of every thing but this 'enormous and outrageous, and barbarous falsehood of abortion, which was an after-thought,—with a full and perfect knowledge of her intimacy with Sumner, her rides with him, her going to saloons, her exchange of rings and letters, the gift of a book, and the knowledge of the still further fact, that on one occasion Sumner, in a moment of passion, had reached his hand into her bosom,—with the knowledge of every fact and declaration on which this jury will place a particle of reliance, declared, not merely by his language, but by acts and conduct the most unequivocal, that he believed her innocent of that crime, and loved and trusted her still. And so I have to repeat,—for it seems to me that in this view the argument will appear to be conclusive,—I repeat, that down to that time, through all that interval, from the 17th November down to the 14th January, with the knowledge of every credible fact and circumstance, Dalton, who knew his wife so much better than we can know her, who knew how pure as an angel she came to his bed, who knew when she spoke the truth, who knew how tenderly she had loved him, who knew so much better than we can know, how to probe her, how to practise upon her, how to surprise her into confession,—he who had even a chance to watch over her sleep, and hear the revelations of her dreams,—he loved her, and believed her innocent of this charge, down to the 14th February,—down to that date, I respectfully submit, the fact will not admit of controversy. Once for all, gentlemen, remember that series of letters from the jail, so honorable to his first thoughts, showing him still so well worthy to be the husband of this wife; those letters from the jail, so beautiful, so manly,—unless he was deceiving her, which, of course, he was not,—one long, unbroken strain of music, the burthen of which is "home, sweet home, and you, my loved one, my fond one, dearer and better for what has happened, you again to fill, and illumine, and bless it." So it stood down to the 14th of January, which brings us to a great epoch in the history of this case.

We come now, Mr. Foreman and gentlemen, to this last suit. The Grand Jury found no bill against Mr. Dalton and Mr. Coburn for murder, but indicted them for manslaughter. On the charge of murder they were to be released, and were released. They came aboard on the 14th of January, and then at once they were to prepare for their trial, which promised, at that time, to be a very severe one. The punishment for manslaughter may be twenty years in the State Prison, and of manslaughter both these parties were at that time believed, by the public, to be guilty; they were believed to have aided in sending that boy to his dishonored and untimely grave. Public opinion, whatever that is worth, was undoubtedly against them both—especially against E. O. Coburn, as the oldest, and probably the leader in that tragedy; and he having taken it into his head to console his domestic grief, by stealing \$1700 from his father-in-law's safe, by keys, false or otherwise, was somewhat distrusted, and as likely to undergo a pretty severe trial at the bar of public opinion. To change that public opinion, and in order to a defence against the charge of manslaughter, it became necessary that there should be a belief, or at least, an appearance of belief, in the guilt of Sumner. And therefore, gentlemen, at some time, the precise time is not practicable, nor is it necessary to fix—but at some time, and at some short time too, before leaving the jail, it was

arranged, unquestionably through the influence of counsel, (not of my brother Dana, who, I believe, was not engaged in this early stage of the case,) that when Dalton and Coburn should go abroad, they should not publicly meet their wives. To go into Court and maintain that Sumner had attempted or committed adultery, and to maintain that in the sincere belief of his guilt, they had killed him, and at the same time publicly consort with their wives, would seem inconsistent and impolitic; and so it was arranged—I do not know as I have to complain of it as an impolitic or inexpedient arrangement—that they should not meet their wives at all. Therefore it is that you hear from Mr. Richardson, that Mr. Dalton wrote to him that, although he had arranged to meet his wife at once, it would not be expedient for him to meet her until after the trial; otherwise he should be very glad to see her. They came abroad, and although in almost the very last letter which he wrote to his wife from the jail, he expressed a desire to fly to her arms, he refused to see her and did not see her, at all.

So it remained down to the 25th of February. I said, and I repeat, that I do not know that this was very impolitic or inexpedient, or that it is to be complained of at all; but I pray you now to see the history of the libel. The very moment he places himself in this position, he comes to be in an antagonistic and false position towards her, from the nature of the case; the habit of dwelling on the offences or supposed offences of Sumner very naturally brought his mind into something like suspicion or belief that Sumner was guilty, and that brought him to a willingness or necessity to believe that his wife was guilty too. At all events, it brought him into a condition of complete perplexity of mind, and surrounded him with ten thousand influences, which poured into his abused ears, and loaded his bosom with jealous doubts. His family and friends, insidious enemies pretending to be friends, gossipers and scandal-mongers, right and left, the whisper of public opinion, to which Dalton is emphatically sensitive, the laugh of bystanders, all came around him as an atmosphere, and brought him to that condition so strikingly represented by the greatest master of the heart—"Perplexed in the extreme"—*"Perplexed in the extreme."* He came to know what I trust few hearts know—

"What damned minutes tells he o'er,
Who dotes yet doubts, suspects, yet strongly loves."

Gentlemen, there is not in the whole history of human nature, in fact or fiction, a more remarkable and affecting illustration of the degree of perplexity to which the human mind can be brought than this of the condition of Mr. Dalton's mind at that time.

Then we have another important fact in this case. You remember how he wrote along all the way down to the 12th of January, how fondly he loved and trusted her, and how happy he hoped they would yet be. As early as the 5th of February, before he heard one solitary fact or circumstance of which we have a particle of credible evidence, so far as we can discern, before the story of the abortion was concocted to poison his mind, my brother Dana was called upon to give us notice of the libel. And then—more strongly to bring to mind another illustration of the perplexed condition of his mind at that time—do you remember that Mr. Richardson testified that Mr. Dalton told him, with all the sincerity in the world, that his wife had actually confessed to him that she had committed adultery with Sumner in Fera's saloon? "I believe her innocent," he says; and then comes on the revulsion which is the natural result of the perplexed condition of his mind, and he says, "she confessed to me that she committed adultery in Fera's saloon." Did she ever confess to adultery in Fera's saloon? You know perfectly well she never did. "When did she confess it?" "At the time of the flogging affair." And yet, after that flogging affair, he holds her to his heart and his bed for three weeks, and writes her these tender and manly letters from jail. He understood exactly what she confessed then. She confessed then what she has everywhere confessed, by her words and

letters, temptation, wrong, sin, but no adultery—no ADULTERY! Accordingly, gentlemen, he lived with her and wrote to her, and she was his wedded and trusted wife for a month afterward. But now in this perplexed and false position in which he stood towards her, preparing for his trial, with ten thousand whisperers at his elbow, he actually brought himself to the belief that she had confessed it! How striking an illustration that is, by the way, of the danger of these confessions! What a lesson of candor and caution and good sense it teaches a jury, as to weighing alleged confessions put in evidence!

However, there he was, from the 14th of January down to the 25th of February, away from her, among her enemies, his heart encrusted over, though, as we shall see in a moment, a deep fountain of love and trust was there even yet.

We come now to the 25th of February. What happened then, gentlemen? This wife had been kept from his sight from the time he left jail on the 14th of January down to the 25th of February—more than a month—she had never seen him. On that night, winged by that love which was stronger than the malignity of the Coburns, that love which is said (if I may be excused the expression, in a cause so grave as this) to “laugh at locksmiths,” she forced her way to his presence in the very house of her enemies, his enemies, and the enemies of truth. Gentlemen, what took place there on that evening of the 25th of January can never, of course, be perfectly known, until all secrets, large and small, shall be revealed; but I have no fear but that the intelligence of this jury will penetrate that interview, and I have no fear but that, turning with disgust from the perjury of John H. Coburn, you will see that these were the transactions of this evening: They met there after a long separation. The meeting, at the commencement, was most painful beginning in a review of the past, interrupted, of course, by sobs and tears, in which she again reviewed and reiterated, and prayed him to forgive her for what she had done, the very same story she had told at the house of his mother the Sunday after the tragedy, and then and there, I respectfully submit, you will find, on the proof, that the husband trusted her again, completely, as he had done from the beginning, and surrendered his heart and person to her; that they then locked that door, and there remained alone, until some one, rapping upon the outside, reminded them of what they seemed to have forgotten, so fast had the hours flown by, that it was past nine o'clock. Instead of meeting there to make arrangements for a separation of husband and wife, which is the theory of the other side, instead of that, it was a still more sad and self-reproachful confession of all that she had ever done, asseverating and constantly avowing her innocence of guilt; and he, then and there, finding he had no criminal guilt to pardon, pardoned and forgave the rest, and they locked their door and sat down to sketch out the plan of their future troubled life. It was not expedient or practicable that they should meet publicly, for his sentence was still hanging over his head; but they sat down then and there to arrange their future life, as he in terms told her father. They parted with the understanding that the first meeting, somewhat privately from the Daltons and Coburns, was to take place at the house of Mrs. Richardson, her sister, on the night following.

I cannot possibly abstain, as I see it lying under my eye, from recurring to that mutilated letter, which, because it had been mutilated, his Honor declared inadmissible, but which came in by our consent last night. I ask you to turn to that, and see if it does not reveal that this “poor creature” (as even Mary Hunter was constrained to call her,) went away from that interview walking in the air, in the clouds, a new world, a recovered husband, a happy future opening before her. Hear her, and not my colder language.

“My much loved husband: In our meeting yesterday, I see a bright hope and prospects of a happy future before me. Oh! dear Frank, I hope that the day will come when we shall be

happy soon. I feel much happier than I did yesterday. [Why “much happier?” Because she has told everything? Because she has a great load off her conscience? No, gentlemen!] I feel now as if I had a dear husband to live for; before I felt as if I did not care to live; I had nothing to live for. But oh! what a beautiful thought now fills my heart—that I have him, dear Frank, to live for; him to build all my future hopes on; his strong arm to lean on; his dear words and sweet smiles to encourage me; and if I should ever falter, I have Frank to say, cheer up, Nellie, we shall soon be happy. It seems as if I could not express on paper my thoughts; but I long to fly to his arms, and lay my face close to his, and then tell him all my heart.”

Judge you, gentlemen, judge you, whether or not that letter was written the morning after a confession that must have rung tears from the eyes, and drops of ruddy blood from the heart, of the husband who parted them forever! No, gentlemen! I repeat, they met; the meeting was sorrowful at first; at first it was a review of the melancholy past; it was repentant of that past; it was the assertion of innocence; it was the delicious belief of innocence; it was the arrangement of a future life, based upon that belief; and therefore it is that when she awakes the next morning a new sun is shining, there is a new heaven and a new earth.

But what followed? He could not be publicly seen with her, and Edward O. Coburn went home with her that night, and Edward O. Coburn had discernment enough to find out how it was with them,—that she had won her husband back again; and even he, although he is a man who will mutilate her letters and turn them by forgery as far as he can into a lie, even he was obliged to admit upon the stand, that she told him, that she felt better that night, for she was going to see her husband again the next night. Then it was that these parties, the Coburns, finding that the husband and wife were going to come together again at last, and that all was likely to be over,—then and there it was, I respectfully submit to you, gentlemen, that they fabricated and reported to Dalton this hideous and unutterable falsehood of the abortion, by the instrument of Dr. Calkins. I submit to you, gentlemen, that then and there it was that they approached his abused and ready ear with that infamous story of abortion. There was exactly enough of truth for falsehood and malignity to work upon. The truth had been exactly this. Mrs. Dalton had suffered a premature birth. Grief and care which were entirely adequate to produce the effect, according to the testimony of the medical witnesses who have been upon the stand, had prematurely nipped in its bud of life her progeny. Three times, including the last one, she had been attacked by the pains of miscarriage, and three times that Christian, matron mother, of whose credibility I shall bye and bye have the honor to say something, but on whose credibility I with undoubting confidence rely,—this Christian mother, when these attacks came on, herself familiar with that agony and pain, applied to her a mother's care, and a mother's love, and along with these, those old mother remedies, warm water for the feet, and composition powders;—not to produce miscarriage, because that event was believed to be inevitable, but in the vain idea—for Dr. Clarke has told you that they were worthless for this purpose—that they might a little relax the system, and diminish the agony, and if miscarriage must happen, a little relieve the sufferings of her child. If for that, this Christian mother is to stand condemned and judged, as a party to the murder of that young life, God have mercy upon us! I hope there is no one on that jury, who is a victim, as I am, periodically, to sick headache, as I should just as soon expect to have my wife accused of murder, because when that torture is upon me, she is in the habit of coming to me with a little warm water, and bathing my head, in the hope that, possibly, it may relieve, in some degree, the agonizing throbs. Is it administered to cause sick headache?—judge you as you would be judged; or in the hope that the pain would be assuaged, the system relaxed, the time of suffering shortened! This is what they have done. The two first cases of this difficulty passed off. While she was

suffering from the third attack, her brother-in-law broke in upon her, and told her, that her husband had refused to see her, and to live with her, and then, after an agony of tears, and another appeal to her Maker that she was innocent, the miscarriage took place.

On that foundation, I say, gentlemen, I submit, it is perfectly true that these men then and there fabricated, out of whole cloth, the story of an intentional abortion by the agency of Dr. Calkins. I shall by and by have occasion to show you how unutterably false is that story—false everywhere, disproved by the weight of irresistible evidence in this case. But I advert to it here and now only for the purpose of showing you how it was that the last blow was struck, and Mr. Dalton was, for the present, at least, if not forever, separated from his wife. And that fiction did the business, and he thenceforward surrenders himself to his friends, as they call themselves—his enemies, as I think, and here he is, upon such testimony as they enable him to lay before you.

I have taken a great deal of time, gentlemen, in going over with what I regard as the fair result of the evidence of the history of this cause and of this trial. I am not, as you are aware, required by any rule of law to prove it, or one word of it. We are now to turn to the case on behalf of the libellant, and see what they have to prove, and how they have proved it. And this brings me directly and more immediately to the more methodical argument of the case.

I cannot promise you, gentlemen—and I know I should disappoint you if I did—that the trial will continue to be anything other than what it has been, a very painful trial to us all. I have evidence to comment upon that I should be very willing to be excused from commenting upon. The whole duty, up to this moment, has been painful to you and to me. What then, gentlemen, what then, Mr. Foreman? The duties of life, how much more they are than its pleasures merely or its enjoyments! I hope you or and one of you do not think so badly of me as to suppose that I would much rather spend the last fortnight in my office investigating a question of law, or in the trial of the ordinary civil cause docket, or in reading a rich and useful book. But we are all of us here to try to do a duty, gentlemen, a professional and a judicial duty, and I will only say—and I think I may be excused for saying it after some passages that have taken place in this trial and in your presence—that if the result of that duty shall be to vindicate the innocence which has brought itself into suspicion, but innocence still, to detect perjury, to render human life and happiness safer, to keep together a little longer those whom God hath joined—if that is the result of it, I hope, Mr. Foreman, that neither you nor I will believe we have been engaged in anything disreputable or dishonorable, or unworthy of us or the place in which we now are. I trust not, gentlemen.

I may be permitted, in reference to another passage which has taken place in the course of this trial, for myself, the public, and the press, to say that I have the honor not to think it extraordinary that the public crowds this place and reads these papers to hear the progress of this trial; I have the honor to believe in behalf of the public that it is something better than a love of smut and obscenity and filth that creates this interest. I believe, gentlemen, as a member of a profession whose character I represent and vindicate, that no man will be injured by hearing these proceedings who was good for anything before they began. (Sensation.) Our habits are for public trial and investigation, and our liberties will last just as long as our trials are public, and not a moment more. We agree in that; we have this love of a public trial from our ancestors. Who does not remember a remarkable case a few years ago, when her majesty the queen of England was arraigned before the house of Lords on a charge, and assailed by a body of obscenity, smut and filth and trash, compared with which the evidence of Mrs. Coburn is as innocent as one of Dr. Watts' psalm or hymns. (Laughter, and demand of "silence" by the officer of the court.) And here I would like to ask your

honor and this public whether or not, if it had been proposed to try that cause under lock and key at a long table covered with baize and by lamp light, the people of England would have borne it? They would have thrown every Lord and Bishop into the river, and piled the stones of the parliament house on their heads, but they would have seen that trial and heard that trial. Do you think that was for the love of offensive exhibitions, gentlemen? I have the honor to believe, for the country of my descent and yours, that was the old English love of fair play. They wanted to see how this was to be done, and how it was that a set of Italian rascals and villains, that ought to have been hanged forty years before they came over to England to testify (laughter) were going to prove that the greatest of queens could become the wickedest of women. It was an inclination to see that done; and if John H. Coburn must separate this man and wife, people want to know how it is brought about, and surround the jury, to see with their eyes and take something of the benefit of their judgment. Shame to him who evil thinks. I said, and say again, no man is hurt by this trial who was worth saving when he came into Court! Shame to him who evil thinks! The man, the mind, the heart that could go through such cases as this, listen to this sad, melancholy story of bridal love, of jealousy, of misery, of sorrow, of broken hearts, of wilful perjury, and carry away no impression but of its obscenity, reminds one of an expression used by Joseph H. Buckminster, pastor of your Brattle street church, who said he could go through a gallery of art, containing the pictures of heroes and demigods, with no impression but that they were all stark naked.—(Laughter.) Shame to him who evil thinks. Let us, gentlemen, not suffer our delicacy to prevent our doing our duty; the result is to be one which may interest the heart and affections and improve the life.

We begin this trial, Mr. Foreman and gentlemen, by taking with us a familiar principle of the law—by the presumption that everybody, and especially the defendant, is innocent until clearly proved guilty. We begin with the presumption that it is in the last degree improbable that a young bride, in the fifth month of her marriage and the second month of her pregnancy, affectionate, modest, of christian training, has committed the greatest crime of woman. We take with us, gentlemen, merely that the circumstance that she has been engaged in what Edward O. Coburn said he thought was a flirtation, and nothing more, with young Sumner, does not prove that the last great step is taken. We believe this, and take this with us, because we know it to be so perfectly well; we ourselves and those we love best, rejoice to know that it does not follow because one step has been taken, all have been. We take with us the ordinary principle, too, by which circumstantial and other evidence of adultery is to be weighed. I had the honor to call the attention of the Court just now to an authority upon this subject. It is not worth while to trouble you with it, but I pray his honor to take notice that throughout the burthen is upon the libellant to prove his case clearly and undoubtedly; that every invisible fact and circumstance goes for nothing at all; and that throughout, if everything that has been established by credible evidence is fairly reconcilable with the innocence of the party, in reference to the great ultimate charge, there is not a tittle of proof in the case.

With this we start. It is the crime of adultery, Mr. Foreman; it is an intentional and deliberate surrender of the person unlawfully to another. No surprise at the window, no sudden placing of the hand within the bosom, instantly and by a flood of tears repelled, is adultery. There must be some intentional, intelligent, voluntary and consummated surrender of the body; and this established by evidence clear and undoubted, or there is no case. No such case is established or begun to be established before you. It would express my opinion, gentlemen—and if I should allow myself, what I would prefer to do, to make a very short address upon

this evidence, I should leave it upon that—it would express my opinion exactly of the state of the proof, if I should say that until you come down to the alleged confession of J H Coburn, there is not a particle of proof, not one fact, not one declaration, that tends in the least degree to prove the guilt of the defendant; and of John H. Coburn's testimony I should say, it was the most barbarous, beastly, incredible, impossible perjury that was ever attempted to be passed upon a jury, and if my object, as I said before, were merely a verdict of acquittal upon this charge, I would leave it there, or rather I would proceed at once to the discussion of the testimony upon that fact. But the importance of the cause and the novelty of the trial make it necessary to go a little further, and therefore, beg leave to submit my commentary upon the whole proof under this arraignment, and I commend it to your attention, as it will enable you to see where I am in the progress of the discussion, and I will enable you to give me credit for believing that if I do not at once place, or in one moment, reply to a piece of evidence that lies in your own mind, according to the arrangement I have proposed, I shall do it in another.

I have therefore to submit to you that every particle of credible evidence in this case, until you come down to the testimony of John H. Coburn and the alleged confession on the 25th of February, is perfectly consistent with the innocence of Helen Dalton; and I shall respectfully submit that if it rested there, on the whole case as it existed down to that evening, you would not leave your seats to find a verdict for the defendant. I shall then have the honor to admit to you that Mr. Coburn's evidence is not entitled to a moment's belief. I want you, gentlemen, first to try all that evidence yourself, and after you and I have conferred a little upon it, I shall respectfully once more ask you to appreciate the great fact that upon every single word of it, every fact and circumstance, Mr Dalton himself pronounced his own judgment, and declared that it did not convict her of guilt.

In the first place, let us look at it for ourselves. It is usual in cases of alleged adultery for the libellant or the Commonwealth, or whoever has the burden of proof, to begin by what is called positive proof of what are called proximate acts; that is to say, direct positive evidence of certain acts committed by which a party approximates to a surrender, evidencing an immediate commission of the crime. Direct evidence of the commission of adultery is of course very rare, and is never demanded. Positive evidence of these proximate acts, such I mean of course as the parties being found very near each other and apparently surprised, rising hastily, dress discomposed, one running one way and another another, confusion, hesitancy, embarrassment—positive evidence of that kind of proximate acts is ordinarily the evidence by which adultery is established in a court of law. Accordingly on a late occasion, in the immediate neighborhood, which every body, except perhaps my brother Dana, may have heard something, (laughter,) that was the admitted line of proof—positive proof of alleged proximate acts.

The first remark that I have to make here is, that there is not the first particle of evidence of any proximate act.

I want you to see, gentlemen, how much this is worth, because in the judgment of ecclesiastical courts, on which my learned friend insists so much, and of which we shall hear so much said hereafter, a direct evidence of proximate acts is almost conclusive proof of a case of perfected adultery. But this case opens with this great capital fact in the outset, that there is not a scintilla of evidence credible or incredible that these parties were ever seen together in anything in the least degree resembling a proximate act. How easily, therefore, do we dispose of one usual and important branch of this evidence? They have been shown by positive proof to have been together on a number of occasions; they were together at Fera's saloon and Vinton's saloon; once they were seen by somebody who shot a pretty long shot from a pretty long bow across Summer street, sitting at the window of a boarding

house; they drove twice together in a 'bus with a dozen people in it, and once from Cambridge to Brighton, four together, and once it is said they rode alone. And what I have to remind you of is this, that on no one of these occasions—and they are not numerous, and they were watched perhaps by sufficiently attentive observers—not only is there no evidence of proximate acts, but it is demonstrated that whensoever and wheresoever else this crime was done it was not then; wheresoever and whensoever this act of adultery was committed, it was nowhere to which any of the witnesses on this stand have given a particle of proof here.

We begin then, so far from its being a failure of evidence on the other side, I respectfully submit, we begin by showing by eye-sight testimony, and that testimony mainly comes from the libellant, that everywhere, at every place, on every occasion when they were together, they were certainly innocent; and I suppose that I may say that it is not an unreasonable or an unchristian presumption that they were as innocent everywhere else as they were then and there. To be sure these were not occasions when proximate acts were charged or where the act of adultery was charged, but two of the witnesses produced to swear to that fact not only swear that nothing of that kind took place or could have taken place, but that there was no intimacy, no impropriety of address or attention to one another; but generally that it was about as ridiculously impossible, a time and place to fix the charge of adultery, as they had done it in the libel, as it would be to take the broad stair flight of the pulpit at an ordination meeting. (Laughter) And yet, gentlemen, Mr Dalton said she confessed that act to have been done, in a great saloon opening into the street, a wide hall from end to end, with the means of taking a dinner in the recess by a small party, but they never entered it.

There was another occasion, gentlemen, when they were together. It is in the testimony of Mr. Burns, the driver, who took them from Mrs Emersons, but there is not a scintilla of evidence that so far as Helen Dalton was concerned that was a meeting by any arrangement. She was returning, upon the sworn testimony of Mrs. Coburn, expecting no meeting, but there was a meeting and they taken up; and you have it from the evidence of Mr. Burns, a witness called by the libellant, that all the way out and, home the windows were wide open, the side windows and front windows, until he himself closed one, not at their request; that the place of stopping was selected by himself, and the fact of stopping was at his own motion, because his wheel wanted a supply of oil; and that the moment the supply was made he drove up to the door and took them in again, dropping the front window at his own suggestion and driving to Boston with both windows wide open, they talking and laughing on the way. There was no proximate act of adultery, as there was no act of adultery committed. I am not greatly gratified to find them driving in that carriage as they did, talking and laughing as Burn's testifies they did, but we are here upon a charge of guilt, and I prefer to remark one thing, that all the way home they were talking and enjoying themselves—no pauses of expressive silence—nothing anywhere to indicate the absorbing seriousness of lust; it was an idle drive and there was no adultery there.

Then, again, at Mrs. Coburn's, I think Mary Hunter swears that Sumner called on Mrs. Dalton, and there they sat with the doors wide open; upon one occasion Mr. Coburn was there, and on the other the door was wide open, and they were conversing during the short time they were there. But there is no proof of an attempt at any proximate act, still less any adultery.

At Vinton's saloon, perhaps you have forgotten the witness who speaks of it, they were universally in company with Miss Snow, and she expressly says she saw no act of indecent familiarity, and she never saw or noticed so much as anything to attract her attention, but the fact that Helen once handed a letter to Sumner under the table, with the express request that he would not show it to Porter. Very high evidence in that—very

high evidence, I conceive, of intrigue with the party, if she thought it necessary to ask him not to put it into the papers next morning!

And this, I think, disposes of all the occasions on which, by positive evidence, the parties were supposed to be guilty of adultery. When we come to confessions, there is something different in the proof. Of the last *deposition* to Brighton I shall speak by itself; but permit me to say that then and there too, on the evidence of the case, there was no proximate act of adultery at all, for I apprehend that a proximate act contemplated by the ecclesiastical law and common sense is some act of familiarity, or offer by one and indulged by the other, and there is not a scrap of evidence, I say again, until you come to John H. Coburn, that there anything more at the farthest passed between them than an indecency attempted, or an indecency suddenly done, and which was instantly repelled by the party.

We start, then, with the capital fact, as I said before, that on every occasion when positive or credible proof brings them together, there is a total failure of the ordinary evidence and of those proximate acts which mark adultery just done, or just being done, or just meditated. And so far, therefore, I repeat again, as we can go by the eyesight of mortal man, there was never any adultery committed at all; if it was committed anywhere, it was at some place and at some time unseen, or beheld by some eye of which we have not a trace in this inquiry. So, then, if I were disposed to insist upon a proof of a negative for the respondent, we begin by offering all the proof of a negative of which from the nature of the case such a fact can possibly be supported. Let me repeat, gentlemen, as it is now nearly the hour of our usual recess, before I take my leave of this point, what I attach great importance to throughout the investigation; not only do we show that where-soever they did meet there was no proximate act, but there is an utter failure to show, except by her own confessions, which in their credibly exhibited form I do not fear to encounter, a tittle of evidence that they ever met alone on the face of the earth except in that single last ride. There is not a tittle of proof of any such meeting, unless in that exceptional case, when he was sitting at her feet, according to the evidence of one witness, in broad daylight, for all we can know to the contrary, reading a book. With that single exception, there is not a particle of proof that the parties were ever alone on any occasion except on the occasion of the drive. Of course you will say they could not be alone if the witness saw them; but I say there is no proof that they ever *thought* they were alone except on those occasions, and on those occasions we know as well as we know any fact, that they were innocent. That disposes of the first branch of the evidence ordinarily relied on to establish the fact of adultery.

[At this point the Court took a recess for 15 minutes, after which Judge Merriok stated that in view of the laboriousness of the trial, the session would close at 2 o'clock to-day.]

Mr. CHASE resumed. The burthen being then upon the libellant to establish beyond a reasonable doubt the fact of the adultery, and the libellant failing altogether to produce the ordinary evidence of a positive character of proximate acts, we pass on; still, as you understand, gentlemen, confining ourselves entirely to the state of the proof, before we arrive at the alleged confessions; we pass on to see what is the nature of the proof relied upon by the libellant. And you see, that it is circumstantial evidence only of adultery. They rely wholly upon circumstantial evidence to prove the alleged fact of adultery. I speak of this intermediate and earlier period, let me say, in order that I may be perfectly appreciated by the jury, before and independent of the alleged offence sworn to by the Coburns, and I remind you that it is no more, at the best, than circumstantial evidence of adultery. I need not pause to remind you how much caution, how much candor, and how much intelligence are requisite in appreciating

circumstantial evidence in any case. That kind of evidence may clearly prove guilt. That many times, however, it has also shed innocent blood, and many times it has stained a fair name, I need not pause for a moment to illustrate or remind you. Instead of doing that, I think I shall be better occupied, under the direction of his Honor, in reminding you of the two great rules by which circumstantial evidence is to be weighed, appreciated and applied by the jury. These rules, gentlemen, are these:

In the first place, that the jury shall be satisfied, beyond a reasonable doubt, that the circumstances relied upon to prove the fact really existed; and then, when these circumstances are clearly and certainly established.

In the second place, it is a rule of equal, or even more importance in this case, that the jury shall be satisfied that they conduct, as a necessary result and conclusion, to the inference of guilt. It is a rule that may be called a Golden Rule in the examination and application of this kind of evidence which we call circumstantial, that should it so turn out that every fact and circumstance alleged and proved to exist is consistent on the one hand with the hypothesis of guilt, and on the other hand consistent, reasonably and fairly with the hypothesis of innocence, then those circumstances prove nothing at all. Unless they go so far as to establish as a necessary conclusion this guilt which they are offered with a view to establish, they are utterly worthless and ineffectual for the investigation of truth. I had the honor to read to the Court this morning, and possibly in your hearing, an authority in which, that familiar and elementary doctrine was laid down, a doctrine every day applied, everywhere recognized as primary in the appreciation of this kind of evidence. It is not enough that the circumstances relied upon are plainly and certainly proved. It is not enough to show that they are consistent with the hypothesis of guilt. They must also render the hypothesis of innocence inadmissible, and impossible, unreasonable and absurd, or they have proved nothing at all.

I might illustrate this by reference to cases, and by reference to the practice and experience of courts of law. But there is no need at this moment to detain you upon this subject; and I pass at once to the examination of the circumstances relied upon by the counsel for the libellant to prove the charge of adultery. I think, I may very well put first, as the foremost upon which they here insist, as the capital fact and circumstance upon which they mean to rely, that Helen Dalton, having been conscious of the guilt of adultery, practices, by the aid, assistance and advice of her mother, the crime of intentional abortion by the agency of Calkins' instrument, to conceal that guilt. That, I respectfully submit, is the fact and the great fact that the libellant insists upon in this case. That is the circumstance, I have had the honor already to submit to you, by which they at last determined the yet undoubting mind and heart of Dalton. That was the capital suggestion by which they at last approached him, and persuaded him to abandon his wife and institute this libel. That circumstance is also the first and main one through which, from the first three days of this trial, they appeared to gain the ear of the public and the press, and by which they made an impression upon you.

I have the honor to insist, upon the evidence, by leave of the Court, that a more enormous and manifest falsehood, in the color of circumstantial proof, was never laid before a jury. What is this circumstance, exactly as the libellant, by his testimony, brings it before you? We learn from the testimony that Helen Dalton, having been threatened with a natural miscarriage in the manner indicated in the evidence upon the stand by her mother, and corroborated more particularly by other testimony, having been threatened with a natural miscarriage, once, twice, and a third time, was assisted by her mother by some of those feeble and accustomed old woman's remedies, warm

water applied to the feet, composition powder to be taken. It is not the charge, and I understand that the learned counsel will not venture to take the ground, if it be true in point of fact, as upon the evidence has been shown to you, that she was merely threatened with a natural miscarriage, and in order to break its force, alleviate its pangs, and if it was inevitable abridge its duration, her mother applied the remedies; but the charge is this exactly; that being perfectly well, liable to bear a child, whose countenance might tell the story of guilt, fearing the revelation of a natural birth, under the advice of her mother, attended by her mother and counseled by her father, she was conducted at first to an irregular operator who performed an artificial operation for abortion. That is the ground taken by the other side; and it is between these two theories, upon this part of the case, that I have the honor of comparing the weight of the evidence and invoking the intelligence of the jury. I ask, gentlemen, which theory it is, that commends itself to you? Is it the one propounded by the respondent, proved by her mother, father, Mrs. Richardson, Margaret Ware, Mrs. Emerson, Dr. Calkins, and by everybody, that it was a natural miscarriage, three times developing the threat of its approach, three times vainly sought to be alleviated by those trivial remedies of the mother; three times feared, three times provided against, and at last, happening under the anguish of the communication made to her by Dalton through Mr. Richardson?—is it this, or is it as they put forward, that being perfectly well, pregnant, and about to be naturally delivered, but not knowing who was the father of the child, and fearing that its birth might reveal her guilt, for the purpose of concealment, she resorted to this abortion? If it is the explanation which we lay before you, of course this is all perfectly worthless as circumstantial evidence in the case. But if, on the other hand, they have established their theory, these are circumstances, I admit, of great strength; and I have therefore the honor to repeat that this is the capital fact or circumstance offered by the learned counsel, and attempted to be proved by his witnesses, and by which they persuaded Dalton to resort to this libel, by which they stand or fall, upon the judgment of this jury, in their whole case.

I pray your attention, therefore, for a moment, somewhat more carefully particularly to the weight of the evidence upon this point; and the very first thing to which your attention is likely to be called, is the question—Where was the motive which induced Helen Dalton, or the mother of Helen Dalton, to commit this crime of abortion? Where was the motive to stifle the birth of life of her unborn babe in the circumstances imputed in the libel? Where was the motive? My learned friend is very well aware of the importance of that part of the case, and therefore he made it substantially the ground work of the case, saying that he should prove by certain evidence more clearly to be brought before you, that Helen Dalton stated that she could not tell who was the father of her child, and to secure herself from that shame abortion was practised upon her by the knowledge of some of her family and through the instrumentality of a low physician. My learned brother put forward the motive, and took the issue; but having gone through with the evidence in this part of the case, I ask you where is the particle of evidence, credible or incredible, that Helen Dalton ever stated to any human being that she did not know who was the father of her child? Where is the witness, Edwd. Coburn, John Coburn, Mary Hunter, or anybody, who comes forward here to give the least color to a charge so cruel and yet so decisive as this? If they told my learned friend so, upon consultation with him, before they appeared upon the stand, I can only say that when they came before this Court, and into the light of this room, they did not dare to repeat it. I can only say that if anybody told him so anywhere, when they came here, that which was a mere fiction in the beginning their memory refused to enable them to repeat in your presence;

for I have the honor again to submit to you that from the first to the last, there is not a scintilla of evidence from any witness, even from the most disreputable and untrustworthy of them all, that Helen Dalton ever breathed a doubt to mortal man or woman of the paternity of her yet unborn babe. On the contrary, if it were necessary to consume your time upon this point, I might show you by Miss Dalton and other witnesses, that it was known to everybody or assumed by everybody that Dalton was the father of the child. Mary Hunter tells you that this savior, about which she gives you so much information, the leaves of which may be as large as your thumb-nail, or as large as the New York Courier & Enquirer, she don't know which was given to bring along Dalton's child.—It was Dalton's child, by the testimony of all, that was to be made to be born before its time; and from the testimony of no one, in way of tee evidence, light or dark, is there a suggestion that she ever feared in her life that it should prove otherwise. Where, then, I ask you, does my learned brother find a warrant for that opening which made such a lodgment in your minds and in the minds of the community a fortnight ago, when this case commenced, the assertion that she said she did not know who was the father, and not knowing what father's face might be painted upon its infancy, she decided to destroy it? I respectfully submit, upon the other hand, that it is demonstrated in the course of the evidence, so as to leave no doubt upon the mind of a human being, that whatever else there may be in this case to regret, and whatever else there may be to investigate, Dalton was the father of that child, that it was known to him, that it was known to her, that it was known or believed to be so by everybody; and therefore the foundation of this most cruel and yet influential pretence is struck from under their feet.

How stands that fact upon the proof? Helen Dalton, by a weight of evidence entirely uncontradicted, is proved to have been pregnant as early as the first week in October or the last week in September, 1855. Is there any doubt of that fact? Her mother swears expressly that she knew of the fact as early as the first of October. Mrs. Richardson, who will be believed by the jury in everything she has said, declares that she knew it six or eight weeks before the time of the Shawmut Avenue tragedy, which will bring it to about the last week in September. Mr. Gove knew of the fact of her pregnancy before he went West.—And Mrs. Coburn in her deposition, read by my learned brother last evening, and therefore presented by him to you as a witness entitled to belief, although in some points she may be mistaken,—and I pray his Honor to instruct you that as a witness she is entitled to your belief as intending to state the truth, Mrs. Coburn swears that she knew it as early as the last week in September; so that we have three witnesses swearing positively to the fact that she was known to them to be pregnant as early as the first week in October.—Does my learned brother offer a scintilla of evidence to call this in question? But I shall not leave it there. No. It may not be distinctly before your minds, but you cannot have forgotten that we have also the testimony of two respectable experts, Dr. Storer and Dr. Jackson, who saw this premature birth, and who tell you from their knowledge of the matter, one of them that it must have been begotten 16 or 18 weeks before, and the other that it must have been 4 1/2 or 5 months advanced at the time of its birth. If you can take an average of that, which I think is no more than fair, and call it 4 3/4 months, from the testimony of these experts, and reckon back from the 11th of February, the date of the birth, it carries us to the 20th of September or the first of October as the latest period when conception can have taken place; and I apprehend that in no trial, civil or criminal, turning in any degree upon the investigation of such a matter of fact as that, was a fact so difficult to prove so well and so completely demonstrated. I should greatly regret it, if I have oversteered the facts in regard to the testimony upon this point; per-

mit me, therefore, to repeat it, and then to leave it.—On the part of the libellant, there is not a tittle of proof from the confession of Helen Dalton or from any quarter, that there was not a conception as early as the period for which I contend. There is not a scrap of evidence to that effect. Can it be that rights like these, that affections like these, are to be determined by the jury against proof or without proof, and in the face of a body of such proof as that with which we confront it? On the other hand, we have the honor to lay before you, first the testimony of three witnesses swearing to the matter; directly and distinctly as within their own knowledge, and secondly, that of two experts, who apply their knowledge of science to this subject, and who declare that it must have dated back as far as the last of September or the first of October.

Starting from that, the next inquiry in this case is, when and where did Helen Dalton first become acquainted with Sumner? That at that time she had ever known such a man as Sumner, not a human being contends. And yet the time of that acquaintance has a very material bearing upon the alleged statement that she said she did not know who was the child's father; and in order to show you the utter groundlessness of that charge, I have only to remind you that they have not produced one scrap of evidence that she ever saw the person of Sumner in her life before the middle of Oct. And she bore in her bosom a pregnancy of a month, or at least of two or three weeks, before she ever saw him in her life. I contend that nobody's suspicions have ever dreamed that there was any colorable pretence for the charge of an unlawful connection with Sumner until the 16th of Oct., when certainly she was one or two months advanced in this pregnancy. There is no proof which they have been able to bring upon that point.

But I do not rest it upon the absence of evidence. How stands the matter, so far as regards the direct testimony? They have introduced two direct witnesses who certainly are entitled to credit; Miss Snow, a respectable young lady, a friend of Helen Dalton, and willing to be her friend and to avow herself to be her friend; and Mrs. Coburn, her sister, who would know, if any human being would know, the fact; and both declare that to their best knowledge and belief, Helen Dalton never saw Sumner in her life up to the middle of October. Miss Snow declares that all the knowledge she has of their acquaintance begins about the middle of October, when she was introduced to him; and Mrs. Coburn, in her deposition, read to you last night, makes the declaration that it was the middle of October before she ever saw him. Are not the facts undoubted that she was pregnant, that it was known to her husband, known to her mother, and her sisters? And now, turning again to my learned friend, who says that she declared she did not know who was the father of her child, I ask him, as I asked before, where was the motive to stifle this unborn babe in the birth of life, and to add this crime of murder to all the other incidents with which this case is connected? Where was the motive? Do you think it probable, Mr. Foreman, I pray your attention to the evidence, do you think it probable that this young wife, suspected by her husband, and stricken to her heart because her husband suspected, who knew perfectly well that she was innocent, who hoped that it might live to be a tie and pledge to them in the days of their re-union, who knew perfectly well that she carried in her bosom upon her infant's eloquent features what might one day testify to the legitimacy of the child, the honor of the husband and the virtue of the wife—do you believe that then and there she would surrender her body to this operation, to this peril, to stifle and destroy her means of proof, her most eloquent of advocates, the most powerful means by which a mother expecting and hoping for progeny could look forward to restore the alienated heart of a once loving husband, with whom she must either live or bear no life? I turn upon him, in the total absence of proof, of these alleged facts, and I ask what motive could she have had? I appeal, to borrow

the language of the Queen of France, when, in that great trial which terminated with the sacrifice of her life, being accused of everything else, she was accused of pandering to the vices of her son, she exclaimed, and that shriek went through France and through Europe, "I appeal to mothers if it be possible!" I appeal to you if it be possible that this daughter should be led out by her mother, and trotted across the street like an unclean beast, for an operation which was to destroy the hopes of both. I appeal to you if it be possible that that mother and grandmother can be believed to have cared so little about the operation for intentional abortion, as was testified by one witness, that she had performed it herself half a dozen times upon the person of Mrs. Emerson, so that she would do it as lightly and unfeelingly as a boy would shake green apples from a tree. I appeal to you, gentlemen, if our hearts and our reasons do not pronounce and denounce the whole story as a fabrication, an ingenious falsehood, without a single element of grave truth?

And now, gentlemen, having disposed of the intrinsic probability or improbability of the case, I have the honor to say that in the evidence there is not a tittle of proof to support the allegation—no, not a particle, but the testimony of John H. Coburn, who wrote false letters, and committed the undoubtedly State Prison offence of raising money by means of them out of Mr. Gove; Edward O. Coburn, who confessed upon the stand to have stolen \$1700 from his father-in-law; and Mary Hunter, the mother and wet nurse without a husband. And now I entreat your attention to the conflict of words and declarations; declarations interrupted by adverse declarations, declarations of matters imperfectly heard, declarations malignantly exaggerated. And this is every particle of the testimony they rely upon to establish this fact in this case. The proper time to enter into this will be a little later, when we come to the question of confessions; but I glance at it now for the purpose of reminding you that that is all they have. Is there one grain of corroboration of the testimony? Did Mr. Lincoln or Mr. Lincoln's boy say that they procured of them at that time savin and suspicious composition powders and medicines, given for the purpose of procuring abortion? Not a word of it. Not a word from any human being to prove it. Although their own witness, Mary Hunter, swears strongly upon this part of the case, and points directly to the store, and even to the shopkeeper from whom the medicine was procured, they have been upon the stand again and again; and although we have had a vacation of a week from a cause which we have all regretted, and they have had the opportunity to ransack Boston in every direction, and they have not produced a scintilla of evidence, not one, but the declaration of these witnesses to convince us, as the case assumes at the start, that our poor friend Dalton heard his wife tell him that she had been guilty of criminal intercourse with Sumner in Fera's saloon, and understood perfectly well the nature of their intercourse, which must rest with a burthen upon her heart to the latest hour of her life; no confession at all of open guilt: and here we have an illustration of the worthlessness of the species of evidence before us. I leave it here, reminding you that it is all they have got.

Now, what have we upon the other side? I do not know but the trial will end in the severance of this tie, and in a general conviction of a body of perjury committed in the Court house under your eye, most hideous, most enormous, most unparalleled in the administration of criminal justice. But if it is not to come to that, then I put upon one side of this case of the charge of abortion, this great fact; that we produce the positive and direct testimony of five witnesses,—for I include Mr. and Mrs. Emerson, inasmuch as it is just as fully proved that the operation for abortion has been practiced upon Mrs. Emerson for six times as upon Helen Dalton once,—five witnesses, hitherto respectable in the eyes of the community, who have come before you with every apparent title to your confidence, and who have opposed the declarations which the other side have

brought forward, by declarations of matters of fact strictly within their personal knowledge. Three of them say that no abortion was practised upon Helen and two of them testify that no abortion was practised upon Mrs. Emerson. Five witnesses swear directly as to a matter of fact, most striking and painful if it ever happened within their recent experience, which they will remember as long as their moral nature exists, if it occurred at all; and these five tell you that the story is false, and scandalous and groundless from beginning to end.

I think I should hardly be warranted in an ordinary case in detaining you another moment, if it were not very material if it were probable, if it were not attended with consequences which I think will settle this controversy. If it were a mere naked question whether abortion was procured or not, I should leave it here; but inasmuch as, if it were not done, if that story is as false, every part of it, as any fabrication from the infernal world, this whole case goes down with it, I ask you to pause a moment longer. If there was no abortion, permit me to say, better were it for John H. Coburn, Edward O. Coburn, and Mary Hunter, if they from an untimely birth had never seen the light, than that they should come here and commit this great sin, if they die without repentance and without forgiveness. I submit that it will follow inevitably, in every aspect of this case, that if that story is untrue, there is not a particle of foundation to rest their case upon from the beginning.

I am not blaming Dalton. Do not understand me as blaming Dalton because he brings forward their charge of abortion. They vanquished him by it. They made a child of him by it. They made him believe that story. He took it as it was told to him, and it was no folly for him to lay it before you. It is they who fabricated it, and who by means of it have won him to this pursuit, who are deserving of our censure. Upon that I have something further to say by and by.

Now I ask you, first and foremost, whether you believe our five positive witnesses. I would not in an ordinary case consume time upon it; but if you will bear with me, I think there is a capital distinction between the testimony of the other side and that of these five witnesses who swear to matters of fact within their own positive knowledge. If that matron mother led that blooming and innocent child across the street for the performance of this operation, she knows it. If Mr. Gove was consulted about it or counselled it either before he went West or after his return, he knows it perfectly. If this happened at all, I submit to you that Dr. Calkins knows it perfectly. And if it was ever practiced upon the pure, youthful, matron form of Mrs. Emerson, does not she and does not her husband know it? And yet they all declare it to be an absolute falsehood upon the stand. Can there possibly be any escape for them if they are wrong? Is not here an absolute certainty, that if they are honest, and state what they believe to be true, they cannot be mistaken? Allow me for a moment to run over this part of the evidence, that you may perceive its entire strength; for I want this matter put completely at rest; to put at rest your judgment; and I want your verdict to express your opinion upon this point. Let me then go over this evidence a little more in detail.

We call Mrs. Gove, who declares upon her solemn oath in your presence, that she never advised an operation, that she never accompanied her daughter for that purpose, and that she never suspected or dreamed that it was ever charged until a late period in the history of this case. You remember her testimony upon the stand, and I ask you whether you believe her a wilful perjurer. I know the deep feeling with which she testifies in the case. I know that she has arrived at a time of life when the future is abridged as well as uncertain and doubtful, and I believe that at any time of life, she would give her own for her child; and I submit to you, if there is any ground to say or any ground to suspect that she comes here willing to peril her soul,—and she sustains, I believe, a Christian

character,—in swearing to a falsehood. Do you believe that story to be true? Grief may have impaired her faculties to some extent. Her memory may be occasionally to some extent defective. Some exceptions may have been taken as to her manner upon the stand. But the solemnity and dignity of that Christian matron upon the stand must, I think, have given to you all the assurance you could desire that she means to tell the truth. Is there any escape for her upon the ground of forgetfulness? Can it be that she could take part in such a transaction, and not be able to remember it? or that she does so much of it in her own house, that a particular case of that kind makes no impression upon her memory? Could she be mixed up with a domestic agony so sharp as this,—could she possibly have taken part in it, led her child to the knife, and carried her back to a premature delivery, and have forgotten it? Gentlemen, there is no such escape for my learned friend as this. There is the most dreadful perjury, or she has told the truth.

But you observe, still further, that there is no excuse left upon the score of forgetfulness, for another reason. You cannot have forgotten with how much minuteness of detail she traced the history of this case. She fixed the period of the pregnancy, announced the fact that she was three times threatened with miscarriage, fixed the number of weeks as nearly as the time may be fixed, a time corroborated by the testimony in the case of the final miscarriage. You will remember that she stated with the utmost precision, the kind of remedies which she applied, the periods she applied them, the effects that followed; that one attack passed away, and then, after a considerable interval, another came on; that these attacks were subdued under the influence of some applications made by her maternal care; and at last the third and decisive attack followed, hurried to its inevitable consummation by that sharpest of afflictions, announced by Mr. Richardson, that her husband refused to meet her again. I respectfully submit, therefore, that there is no room, none in the world, for escape, upon the score of forgetfulness, from the charge of perjury, if she has not told you the truth.

Permit me now to say something of Mr. Gove. He stands before you convicted of a violation of truth and a most deliberate perjury, if he had any agency, direct or indirect, or if he ever suspected, in his life, that the crime of abortion was committed, until he heard it in the anonymous communication of which he has spoken. I know very well that Mr. Gove's testimony is liable to criticism. With this burthen upon his mind, and this long agony, threatened as he is with the lopping off the lowest and fairest branch of the family tree, I know how full his heart is, and I respect him the more for it. I know, gentlemen, that he does not dismiss it from his thoughts an hour; that it in his prayers; that it goes with him to his bed; that it attends him in the streets; that it lies heavy upon his heart everywhere; that it makes him forget the proprieties of his general character, in the presence of one of the jury; I know that it haunts his dreams—dreams, gentlemen; he has no sleep, but the sleep which anodynes supply him; and I know very well, therefore, that in regard to trifling matters of detail, or concerning proprieties of conduct, Mr. Gove has not appeared advantageously; the father has been too strong for the citizen, in certain respects, and to a certain extent; and I need not appeal to you, gentlemen, who may expect or fear also yourselves to be judged, to say whether or not he would commit a wilful perjury upon a matter of fact like this. Is not that a wholly delusive theory, in everybody's judgment? May he not be imprudent and talkative, wish to hear whether one man or another man is so pass upon this trial, which affects more than his life, because it affects what is treasured in his heart? May he not want to know about what this witness says, or what that witness says? May he not talk imprudently or even foolishly, but yet, past the middle of life, a man whose grey hairs and bald head give evidence of an approach to that time when we should be walking, thoughtful and silent, upon the solemn

shore of that vast ocean upon whose waves we are to sail so soon, would he not put truth and good words on board? Is that the correct inference that a man like Mr. Gove, grown up before you, a boy from the country, of respectable and pious parentage, one of the disciples and children of John and Charles Wesley, who sings their hymns, utters their prayers daily and nightly, comes to swear deliberately and willfully to a falsehood? God forbid, gentlemen, that we should thus judge one another in judgment! I do not appeal to your charity, to your hearts, but I put it to your knowledge of life,—and you may be parents,—whether you cannot appreciate perfectly how the father should be talkative, and forward, and imprudent, willing to forget, or at any rate, forgetful of smaller and minute details, and yet shrink back as if hell opened under his feet from the utterance of a lie?

In his testimony about the abortion matter of forgetfulness? What do the Coburns testify? That the "old man" advised it—that Mr. Gove advised it—because by and by a child would be born, and it might be disowned, and nobody could tell what would happen. It is charged upon him, the head of the family, the adviser and strong arm of the family, that he counseled this abortion. If he did it, then he swears falsely; we leave that to himself and his God. We judge of evidence by the rules of evidence, and our knowledge of life. Now, do they contradict Mr. Gove, or bring upon him the least degree of doubt or suspicion? You will remember that he has sworn that he had no knowledge of the charge of abortion until he received an anonymous letter. Some blackguard villain, aspiring to be an assassin, but without the courage of an assassin, got behind a hedge, and wrote him an anonymous letter. Every body, with much experience in life, has received anonymous letters, and knows perfectly well how low and cowardly the sources are from whence they always come. He swears that he never heard a word of it until he received a certain anonymous letter. And how do they attempt to show that he was mistaken, and that he had heard of it some little time before? It is of no more consequence whether he derived his information from an anonymous letter than it is whether his anonymous correspondent knows how to spell, and to my certain knowledge, the majority of anonymous correspondents do not know how to spell. The great question is, whether he was aware of the fact; whether he got the information from one indirect source or another indirect source is a matter of no consequence, it proves nothing at all. The main evidence that he received this information prior to the reception of that anonymous letter, is derived from the testimony of Mr. Silloway, who gave occasion for one of Mr. Durant's best specimens of cross-examination. Mr. Silloway testifies that he told Mr. Gove all about the abortion upon the occasion of what is called the "spy trial," of which I shall have something to say hereafter. Mr. Gove sat down by his side, and he is very sure he whispered something in his ear. Now, let me remind you, that upon a question of perjury, it was not a very favorable opportunity to communicate an idea very intelligibly, whispering to a party upon trial, when probably brother Dana was upon his legs, and at the top of his voice. No doubt Silloway did say to him, as he asserts, "If you continue to defend your daughter, you will hear something you do not dream of." That was all of it. That direct threat does not terrify a firm hand and a loving heart, and is perfectly consistent with the story Mr. Gove tells you here, that it passed out of his mind, and he thought no more of it. Silloway was obliged to swear that he could not say that he had spoken of an abortion at all; he can only swear that he said, if Mr. Gove continued to uphold his daughter, he would hear something of which he little dreamed, and which he might be sorry to hear. It is perfectly consistent with Mr. Gove's testimony upon the stand.

Another charge has been made with regard to Mr. Gove, upon which I shall pause but for a moment, and then leave it, feeling very sure that you will not look

upon him as a man convicted of bribery. I should be very sorry to believe that Mr. Gove, as much as he loves his child, had attempted to bribe a witness. I should be indisposed to believe it, as a lawyer, or as a citizen, especially as what intercourse I have had with my client has been through her father, and has taught me to respect him. There is not a particle of evidence to sustain the allegation. Permit me to remind you of just what happened. I forget the daughter in the father, for a moment. Mr. Gove had heard that somebody or other, some young man at the shop of Mr. Lincoln, had been applied to by Mr. Coburn, or some one representing Mr. Coburn, to know at what time certain medicines were sold. Permit me to remind you that what medicines were sold, whether saving as Mary Hunter affirms, or composition powders, has not appeared in evidence; nothing of the sort. He had heard from some quarter, that they were to be in evidence in some shape, and he had heard that the young man was not very certain as to the exact time. At that time Mr. Gove heard nothing further from the young man. Subsequently Mr. Gove heard that the Coburns all at once are very frequently in the shop of Mr. Lincoln; becoming timorous and apprehensive, he applies to Mr. Lincoln to learn something about the matter, and he ascertains that the question is again raised as to the time of these medicines being sold. Thereupon did he ask Mr. Lincoln to restrain his own memory, or to change it a little under the circumstances of the case? Not a word of it; but simply and solely, Do not influence this young man to change his own recollection, which I know to be true, for your imagination, which I am afraid is untrue; leave his mind to act for itself, upon its recollection, and do you act for yourself upon your recollection. Gentlemen, I justify him. I approve it. I maintain before you as a lawyer, that instead of training a witness, he was protecting a witness from training; he was protecting the first unsophisticated recollection of the young man, against all the indirect training and tampering of these Coburns. He simply said Do not attempt to persuade him that it was at such a time, when I know that it was at a different time. Still later, Mr. Gove learns that the Coburns, who used to be at Lincoln's shop twice a week, have come now to be there, latterly, about three times a day, and that Mr. Lincoln, who is not very communicative with him, is very communicative with them, and he sees Mr. Lincoln again; in his conversation expressing a little feeling that he should be so much more intimate and communicative with them than with him. Some remark of his appears to have been misunderstood, for Mr. Lincoln raises his voice, and says that the Daltons had not tried to bribe him. You know the answer which came from that usually calm man. The suddenness and instantaneousness of the charge, he met by saying, "You are a liar," raising his cane at the same moment; whereupon Mr. Lincoln admits that he might have misunderstood him. In that sudden, instantaneous anger, and in that language, his honesty is instantly asserted. Now, what was the story about the bribery? Mr. Gove had called upon Lincoln, and told him he wanted fair play, and Mr. Lincoln expressed some sympathy with Mr. Gove. Mr. Gove is a gentleman, whom intimidation does not drive from his daughter's side, but he is made a child by sympathy; the bare expression of sympathy filled his eye, unmanned and unnerved his better judgment, and in going out he could not help saying, God bless you for the kindness of that word! Thereupon Lincoln flares up and thinks he has been tremendously near being bribed, but it is evident from his conversation with Mr. Wall, that he was undoubtedly mistaken; I have no doubt honestly so.

Let us not lose sight of the great collateral issue. I go back to my second remark, which is that Mr. Gove is guilty of wilful perjury if he conspired to this alleged abortion, or if he knew, at the time, of its occurrence.

There is another single witness, who, if anybody upon the face of the earth, must have known whether

this charge was true or false, and that is Dr. Calkins. We who did not know who he was, or care what he was, produced him here, because we knew that whatever he was, he would not dare to stand before the face of that mother and child, and tell you that that mother ever practised abortion or assisted in it. We called him and placed him before you, and you know that unless he adds to the other black list, the guilt of perjury, the charge is groundless. As Dr. Calkins is a stranger, he was entitled to be heard before you, and I submit to you that he is entitled to be believed upon his oath, upon every principle of law and common sense, until it is shown why he should not be believed. Every witness is entitled to be believed upon his oath with regard to a matter within his knowledge, unless we have some certain ground upon which to discredit him. I ask you if there is one scintilla of evidence that should warrant you upon your oaths in saying that Dr. Calkins has sworn to a word of untruth? What is there against Dr. Calkins? This only. My learned brother addressed certain inquiries to ascertain whether he had not at some other period procured an irregular abortion. Dr. Calkins took his constitutional privilege and declined to answer. What is the inference? It is that he so respects his oath, that he dares not answer untruly; and as he could not answer untruly, without criminating himself, he took his constitutional privilege and declined to answer. What was to hinder him from giving my brother information about that bamboo bottomed chair? What was to hinder him from denying everything, but the fear of Almighty God on the oath he had taken? And why does he stand here and swear, that he did not practice an abortion upon Helen, but because he can truly do it? I submit to you that the very fact that he made this distinction, that he claimed this constitutional privilege in the one instance, upon which his Honor instantly extended to him its protection, and answered freely in the other instance, showed that he could negative one inquiry as a man of conscience under oath, and respected his oath too much to negative the other. Although I disapprove of what we may conjecture his practice to have been, I thank God that herein we may see another illustration that a man may do one wrong and commit one irregular act, or one breach of the law, and yet that he is not necessarily a devil incarnate, a perjurer, or an adulterer.

I go further for Dr. Calkins, and say this. Disapproving altogether of his bamboo bottomed chair, unless it is an easier one than I have been accustomed to, I have this to say for him, that there is not a scrap of evidence in here that he has taken an infant's life, or endangered a human mother—not one. In coming before you, I know nothing of reputation, and you know nothing of reputation; we know nothing but the evidence of the facts, as they have been by law laid regularly before you.

Three witnesses, then, the only ones who have spoken upon the subject, declare this charge of abortion against Helen Dalton to be false. Are they not corroborated? Mrs. Gove is corroborated with regard to the time of the pregnancy by Mrs. Richardson and Mrs. Coburn, and the two experts upon the stand, and in the evidence that the acquaintance with Sumner did not begin until the middle of October, is she not corroborated? As to the fact that this miscarriage was threatened, there is another evidence, corroborating her testimony. Dr. Clark has stated to you that it was a natural miscarriage in all its history and in all its phenomena, from beginning to end. Is she or is she not corroborated upon that most fundamental fact? Mrs. Richardson, of whom I need only say that you will believe her or you will renounce belief in human testimony, swears that it was perfectly known to her three or four weeks before the event, that her sister was already suffering from the pains of premature pregnancy. Mrs. Coburn slept with her every night, and we heard her deposition read by the learned counsel last night, in which she swears precisely to the same facts that Mrs. Gove testifies to, that Helen had suffered

from the pains of pregnancy weeks before. Margaret Ware, a respectable domestic, apparently not strongly in the interest of anybody litigating before you, also swears distinctly that she remembers these three successive attacks, and the remedies which were applied. She saw no savin, no Dr. Calkins, no means used at all for procuring abortion, so that Mrs. Gove stands corroborated by the weight of the entire evidence in this case.

I should be glad to know, also, if there is any corroboration of the assertion that here was an intentional abortion, and not the natural progression of a miscarriage. I should like to know why, we have not further evidence about it from this family. How comes it to pass that this young woman, passing to Pleasant street and going to Dr. Calkins, no human being in or about the house ever heard or dreamed of it? Mrs. Richardson did not know it; and how comes it to pass that Mrs. Emerson, who spent that very Friday there, upon the evidence of the mother and daughter, who heard her mother say that she feared a miscarriage,—how comes it to pass that she knows nothing at all about it? It negatives it. If Mrs. Coburn is not wilfully perjured, and that will hardly be contended here, you have this striking fact. The testimony of all these parties refers to the successive attacks, and to the fact that the mother feared a miscarriage; it shows that she called upon Helen to lie down and keep still in order to prevent it; she kept her still and recumbent, and in two cases it all passed away; she administered the harmless foot bath, and a composition powder, to diminish its pangs if it should not pass away. I think too there is corroboration in the testimony of Dr. Clark; and in this whole case, if her story is corroborated anywhere, I think you will find that corroboration here, that it is an ordinary case of natural miscarriage, the result, it may be, of grief or care. Dr. Storer and Dr. Jackson have testified that it belongs to this great trial of woman, extraordinary and mysterious, this bearing of children in pain; it is a part of the law that not only physical disease, accident, physical calamity, but the labor of the heart, sorrow and anguish, fear and doubt, and mental pain, may produce this effect,—it is the ordinary history. These remedies rather mark the purpose of the mother to sooth her nerves for the purpose either of securing her from miscarriage, or conducing to her comfort in that untoward event.

He adds one statement of which we must not lose sight in this connection. Mrs. Gove swears to the description of that perhaps happy fetus, perhaps happy not to be born—who knows? She described it as enclosed in a sack, its limbs invisible, floating in the protective maternal fluid; and Dr. Clark tells you, if that is true, it is perfectly certain that the operation to procure abortion could never have been performed; because we understand enough to know that the function and operation of that instrument so applied, is to let the water from the sack and thus artificially to procure delivery. It is just as certain as that the night follows the day, or the day the rising of the sun. If it was brought into the world in the condition which she describes, no instrument could have been applied, except at the hands of Dr. Edward O. Coburn, or Dr. John H. Coburn, or at the hands of that engineer, who, to change the figure, has undertaken to hoist himself by his own petard.—My learned brother has two or three ways of doing it; one is a certain operation, a separation of the parts. Dr. Clarke tells you that this operation is long, painful, delicate—beyond the skill of most irregular practitioners. It is as probable, gentlemen, as that other story, just as confidently told you, of what Helen says took but an instant, and involved no pain. It is therefore certain that there was no cruel disruption, and just as certain that there was no puncture of an instrument. I have shown that Mrs. Gove is corroborated by her daughter, by another daughter, and still another. As to the history of this miscarriage, I am not to forget that this matter of miscarriage and its previous approaches, their symptoms and remedies were all of them reported

from day to day, and from week to week, by Helen to her husband. I intend to reserve, with His Honor's permission, farther comment upon these letters to a later stage in the argument. I shall therefore only here and now pause to say, that throughout the whole series of Dalton's letters, it appears that his wife was complaining to him about her ill health; complaining repeatedly of her ill health; upon one or two occasions, at least, calling his attention to the fact that her mother had given her these powders for some purpose, manifestly for the alleviation of the pain; that the pain had passed, the cause had not disappeared, and she was still to have her child. I need not read a line at this stage of the argument, for it would be in some measure thrown away.

I intend, if my feelings will allow me, to bring this whole series of correspondence, by and by, in its order, before the Jury, in demonstration of the merits of this case. It will be useless to turn to that correspondence now. Suffice it for the present to say this: What becomes of this theory of abortion upon the other side? The story is that, being well enough, feeling herself pregnant, and not knowing who was the father of her child, she decides to submit to this operation, and put it to death. And upon this view of the case this whole operation should be conducted secretly, and without the knowledge of her husband; whereas we see by his letters, as I will show you more completely and regularly by and by, she apprized him from attack to attack, exactly or substantially what was the matter, exactly or substantially what they all feared, exactly or substantially what her mother was giving in order to alleviate her pains if the miscarriage was to happen, and after all, she congratulates herself, congratulates Dalton that she will give him a child at last, and moots the little playful conjugal question, "Shall it be a boy or girl?" I will not trust myself now to read from her letter, but the result is, an ample demonstration that her father, mother, sisters, all knew of it.

I have stated to you that we have produced five witnesses against this charge of procured abortions—five witnesses who have substantially agreed upon every point of fact, and declared that the story is not true. That conduces me to the testimony of Mr. and Mrs. Emerson, which shows the character of the enormous falsehood alleged in regard to her as much as any portion of the testimony,—the enormous falsehood alleged by Edward O. Coburn to give color to this charge, that it is not at all strange that his mother should do this; not at all strange that she should subject this youngest child, to this great peril inasmuch as it was the practice of her life; and he told you expressly that he was aware—that was his language—that she had half a dozen times attempted that very same operation, through that very same agency, in the case of another daughter, Mrs. Emerson, some of the attempts being successful. To put the matter beyond a doubt, he had seen one foetus. He swore to that when he thought Mrs. Emerson was two hundred miles off in Maine, as she was, but he forgot that the telegraph might be employed, and that the daughter and the wife, pure, just, and of Christian character, might possibly be induced to travel as far as that for her good name. When he swore to that falsehood upon, the stand she was in Maine, but we caused her immediately to be sent for to attend, on behalf of her sister here, to meet that testimony. For herself, she might have despised it; she might have disregarded it; she might have selfishly said, "I do not care to have my name mixed up with this painful affair." But better counsels governed, and she came.

I now put it to you, as I said before, that if our confidence in human testimony is not to be abandoned, that apparently just, pure, comely, intelligent and still young wife, swore to the truth when she said that she never had abortion practised upon her by instruments, or by purpose, in her lifetime; that she had suffered one certainly natural miscarriage, and possibly another, may be true; but the whole story as it was told here, in every part and parcel, in substance

and in color, was wholly false. We must believe that somebody tells the truth, and we must believe that one or another swears falsely. I do not think it a very wise position to maintain, that a witness upon one side swears intentionally to a falsehood. It is a hard charge to bring—a dreadful crime to impute.—Better is it to adopt almost any supposition, to solve the case, than that supposition. But we are here in this painful and remarkable position—somebody has perjured himself or herself before God Almighty. That we know. We have only by our best lights to say who, the one or the other, has done it. You are not therefore brought at all to the painful dilemma of being obliged to take a certain theory of a case, or to say that an individual has sworn untruly. Edward O. Coburn and John H. Coburn have perjured themselves, or five respectable witnesses have perjured themselves; and I put it to you, upon the solemn responsibility of your oaths, to declare whether you do not believe Mrs. Emerson and her husband, and these other witnesses. Why should Mr. Emerson come here to perjure himself? Why did he not keep out of Court, if he could say nothing useful or true? It seems that this young man, who had so much confidence in his wife's integrity, had never learned so much in the whole course of his life, as in the cross-examination to which his wife was subjected. He was never so much pained as when he heard her addressed in that series of inquiries; strange upon that stand, strange from those who knew so well that she had lived above suspicion, intimations that she was a mistress, that she was kept by somebody, that her bills were paid by somebody not her husband. Is your husband much at home? Does not his employment in teaching music keep him pretty much away? Have you not a great deal of spare time upon your hands? Don't you go abroad? Have you been to such a shop? Who pays your bills? I respectfully submit that I have a right to know who is responsible for that cross examination. I acquit Dalton. The moment the question is raised, when I call for protection against this proceeding, my learned brother turns and consults his client, and it is suspended. From what quiver came that poisoned arrow? Who instructed my learned and humane friend to address those inquiries which must have been painful, in the last degree, to him? It appeared by her testimony upon the stand, that she and Edward O. Coburn had a difficulty, and that lets you into her heart in a moment. There had been a difficulty; she was supposed to be away, and it was thought that a stab could be struck behind her back in the dark. I put it to you that not a man of sense of you thinks anybody but E. O. Coburn dictated that cross examination. I put it to you, also, that the heart that could prompt it, the malignity that could pursue it, and the ingenuity and smooth hypocrisy that could bring counsel of my learned brother's professional standing up to the responsibility of putting it, is to be watched like a serpent at the heels of the horse, lest he rear and throw his rider backwards. Edward O. Coburn prompted the question; Mr. Dalton disapproved it like a man of honor instantly—or a man of prudence. I choose to take the higher construction always of human conduct when I can. Dalton disapproved it and stopped it, and my brother arrested it. I therefore have the honor to submit to you, gentlemen, that this piece of circumstantial evidence falls on the first ground known to the law; they do not prove the circumstance. It is not a question what would follow from the circumstance; they do not prove the circumstance. It is not a question about dressing the trout; they have not caught the trout, and it may be laid out of the case. But it will be for you to say, gentlemen, how much there is left of this case when that is out. This last device, by which, I submit, Mr. Dalton was brought into this condition and brought to sit here as he sits here, and wait as he must wait with his friends, they being honest men, a verdict recording and pro-

claiming the universal judgment of this community—this device that brings him into this condition being shown to be false and a fabrication, where is their case, where is their testimony to confessions, where is their trustworthiness?

Mr. DANA here whispered something to Mr. Choate.

Mr. CHOATE. My brother disclaims the inference that I draw.

Mr. DANA I would like to make a statement, but at the suggestion of the learned counsel I waive it; I have no right to make it, and he disapproves of my doing it.

Mr. CHOATE. I do not know the object of that cross-examination. It is conceded, I believe, that her husband pays her bills, has her love, begets her children, and don't commit any abortions upon any of them; that is all that is indispensable to this argument; they have not thus far proved a circumstance to show adultery—nothing.

What do they go to next? It is said—and this brings me to an interesting and very important part of the case—that there was an intimacy between Helen and Sumner—walks, drives, rings exchanged, a book given, an intimacy of some weeks, a light, frivolous, objectionable intimacy, one which, as long as she is a living woman, is to be the sorrow and repentance of her life; and so there was. They will say, as Edward O. Coburn expresses it to Mr. Matthews, (that was the witness, I think,) that there was a "flirtation" between Mr. Sumner and Mrs. Dalton. I answer, gentleman, yes, there was; and I answer, also, exactly in the words of Edward O. Coburn and Mr. Matthews, in the same conversation, that it was only a flirtation—that it went no farther than a flirtation—that it might have gone farther, but was stopped. I answer thus this great piece of circumstantial evidence on which they rely, therefore, in the words of their witness, that it was a flirtation only and there it stops.

I answer in my own language, also in the next place, gentlemen, which I greatly prefer, that this intimacy, which since the days of Joseph Addison, has been called a flirtation—a vulgar, coarse word, but one that best expresses the idea—this series of conduct, however, which we call flirtation, as circumstantial evidence to prove the fact of adultery, is wholly worthless; and this is a point on which I hope, gentlemen, at some little length, with some care, not unmindful of my duties as a parent, a citizen, to lay before you my views also as a lawyer, and in a Court. I repeat, and I submit to your Honor's direction, and upon the authorities, that this kind of intimacy that is characterized, as Mr. Coburn characterizes it also between the parties, as circumstantial evidence of the crime of adultery, is wholly worthless, and for this decisive reason, founded upon the nature of circumstantial evidence, that it may perfectly well consist with innocence of that great crime. With propriety, with decorum, with a proper respect and regard to reputation, I agree it cannot consist, and does not consist; but with innocence of the least degree of the crime of adultery, I submit that as circumstantial evidence, it is absolutely worthless, and upon the broad ground that it may perfectly well exist and be committed, and yet no crime of adultery shall have been committed.

I have to ask your attention, gentlemen, a little more particularly to the exhibition of this proposition of evidence under the rules of law, and then to a brief examination of this case; and I submit what I have to say here under three views. But, notwithstanding my entire concurrence with the counsel on the other side, and with the father and with the child in regard to the indecorous, the light, the frivolous character of this kind of conduct, or anything characterized as flirtation, I submit to you, on the whole course of this evidence, it is perfectly clear that Helen Dalton never came to love Sumner with that engrossing, impulsive and absorbing love that endangers virtue and conquers the instincts of shame. I shall submit it to you on the consideration of the evidence applicable to the case. I shall submit to you further, that it is

perfectly clear that the very moment she discovered that in his case his warmer feelings were carrying him beyond the line of propriety, and threatening a solicitation of personal guilt, she started in a moment from his advances. And I shall submit thirdly, and lastly, that this Mr. Dalton himself, with that knowledge of every single fact and circumstance that made up that entire series of intimacies between Sumner and his wife, came deliberately and intelligently to the judgment that she was wholly innocent of the crime for which she is arraigned here to-day.

Under these three views, I beg leave to submit to you some thoughts on this part of the case. Now I had the honor to say—and I shall in a moment refer to the authority that warrants what I insist upon in that behalf—that this matter of intimacy which is characterized by this name, as a circumstantial evidence of the crime of adultery, is not entitled to the least consideration. I have the honor to submit to you that there is no fact in all our social life better established than this: that a young married woman may admit that kind of intimacy and accept a certain degree of pleasure from it, and yet at heart, shall never be touched for an instant by the sentiment of a dangerous love, and start back when the proposition of crime is intelligibly made to her, as if hell was opening under her feet. I submit as the result of all our observation of life and of books—our Edgeworths, our Walter Scotts—all that we have observed everywhere, proceeds upon this distinction and reasons upon it—every observer puts the flirt in one class and the adulterer in another, and everybody understands that they belong to a totally distinct species of characters, that a totally distinct moral and censorial treatment of them applies to them everywhere. We ridicule and satirize her whom we call vain, light, coquettish; from the adulteress we turn away with aversion and tears. We satirize one as foolish, and turn from the other as wicked. We hold up one as a warning to herself for her own correction; of the other we say, "O no, we never mention her." One is weak, the other is wicked; one has a right, I submit to you, gentlemen, to the benefit of the exhortation of parents, the protection of law, the protection of public opinion, the care of a husband; from the other, duty, public opinion, religion itself commands us to turn away and to tear her from the heart, although its fibres part and its blood follows in the effort. Is it not a fact, gentlemen, not very pleasant, not very creditable, but perfectly well known to us all through our observation of life, that many a woman, married woman, may hover and flutter for half a lifetime in this region of vanity, flattery and coquetry, and yet never dream of taking the dark descent below? Is it not a fact as well established as any other that falls within our observation? How many of them will flutter their plumage and incline their ear to the music of flattery, and even allow it to be polluted by the whisper of a half suppressed warmer passion, and yet when the romance is broken by the solicitation of chastity, will start and put their hands upon their ears, and fly as if a goblin damned was revealed before them? I submit to you, gentlemen, that it is a fact perfectly established by all our observation of life, that many a woman may indulge in this sentiment and accept this treatment and feel this pleasure, whose heart is never touched by an illicit love, and I need not, I think, submit to you—your knowledge of life is enough for it, gentlemen,—that unless the heart is conquered, adultery is utterly impossible.

I return, gentlemen, to maintain my proposition. On the law, I respectfully submit that this conduct on which my brother is by and by to insist as evidence circumstantially proving the commission of the last crime, is worthless as circumstantial evidence to establish it. And while I place myself on that ground, I know, gentlemen, that you cannot by possibility misunderstand me so much as to suppose I am defending this kind of conduct. I believe I go as far as any one of you in my judgment of it; I believe I know I ought at least to go as far as you in my moral condemnation of it. I beg

leave to adopt in advance every word of the polished and expressive exhortation of my friend who will address you on this subject. I agree with him in every word he says of its indecorum and its levity, its frivolity and its danger. But I meet him as a lawyer and on the judgment of this jury, on the knowledge of life, on the language of every observer of life and all we know of it, we know that many women have gone so far and yet could never be suspected of having taken that last final step.

In that immediate connection, permit me to remind you of his Honor's direction of the course of law which should govern this case. The learned judge in the case I had the honor to refer to this morning, had occasion to comment upon certain letters that go beyond any letters to be relied upon in this case—to comment upon them and the conduct on the part of the wife. I am permitted by the Court to read the passage to you; it is from one of my learned brother's ecclesiastical judges, (laughter) and I think he at least will approve of their judgment. He was a man, a good man, who knew life too well to make an illogical, a barbarous, a beastly inference from conduct that he disapproved; who knew that ten thousand fashionable women came home at midnight, one o'clock, two o'clock, from a party at which they supposed themselves to be honored, to find their husbands asleep, aye, and to be conscious of a truer pleasure and deeper love when they lay down by his side, than they received from the admirers of an evening. It is a pleasure only too agreeable, to a light, susceptible and easily flattered nature, playing around the head but coming not near the heart; and therefore, gentlemen, I feel no doubt or difficulty that we should be able to agree in our judgment of the act on its true quality as a ground of inference in relation to the grave charge they have brought here. But let me read the charge of the learned judge;

"The letters have been much examined and commented upon. I have read them over and over again; but I do not intend to follow the counsel in their comments. They are written in an ardent and romantic strain; Bushe soliciting interviews for criminal purposes, for it is impossible his object, in thus addressing a married woman, could have been other than criminal, or that when a married woman receives such letters from a married man, but that she must know they were for licentious purposes. Still, however, some women will go a great way without proceeding to the last extremity of guilt; and the Court must be satisfied, not only that there has been a surrender of the mind, but of the person."

"Women will go a great way without proceeding to the last extremity of guilt," therefore that she has gone a little way or a great way is not proof of guilt the oaths of this jury in point of law. It is not proof of guilt, it will not warrant an inference, and it is beyond all manner of controversy, therefore, that here and now, unless they can go further, much further than to those moral and ordinary platitudes in which my brother will by and by indulge, about the impropriety of such conduct as this—which he cannot by possibility paint in anything like the strength of condemnation in which it shows its effect here to-day—an answer to all that is, that we agree with him perfectly, but that is worthless for his argument. Unless, therefore, he can go further than that, and show you beyond the fact of intimacy and beyond the fact of flirtation, that there was this consummated act of guilt established by other collateral and stronger proof, then I respectfully submit that he totally fails on this part of the case, on the doctrine of circumstantial evidence.

Now, gentlemen, I have been laying down the law, so to speak, under the direction of the Court, in regard to this kind of evidence, and I have only now to say, leaving the point and proceeding to the proof, that if there ever was a case in the world where a young married woman might feel a certain degree of pleasure in this description of intercourse, and yet not commit a great crime, I think it would be this. I ask you if you believe it probable that a young wife, eighteen years of age, in the fifth month of her marriage and the second month of her pregnancy, modest to an extraordinary degree as her husband attests, a child of

schools, a child of religion, has all at once committed this great crime? If a writer of romance should put forward such a case, would you not say he did not understand his own foolish business, and that his case was extraordinary and unnatural? Do you believe it probable, do you believe it credible, that those instincts of shame, those lessons of virtue, those lessons of childhood, those words of the holy man by whom they had just been united in marriage, those prayers, those hymns, those hopes, were all lost in a moment? I admit, gentlemen, not very much accustomed to this kind of society, probably never in her life having received the attention and address of a young man like this, she very naturally felt a certain degree of pleasure in it—that kind of pleasure that applies to the head but does not come near the heart, to which the heart which is wise replies, Can this be joy? but the instant the mask was attempted to, or to be thrown off, that instant she saw it was not her beauty, or her conversation, or her manners that made the attraction, but that the aims were lust, she resisted and fled. If then, gentlemen, I am warranted in my position—as I think you will agree with me, as I know I am upon the law—that this series of conduct, which we call a flirtation, is not circumstantial evidence of guilt at all, this case presents the strongest possible illustration of that fact.

There is a cardinal rule for the interpretation of circumstantial evidence which I referred to yesterday, and which I deem of such vital importance in the case, that I will read it to you again—

"When the facts relied upon are equally capable of two interpretations, one of which is consistent with the defendant's innocence, they will not be sufficient to establish guilt."

That they are irreconcilable with positiveness of guilt as well as of innocence, gives them no value as proof of the fact. It will not, therefore, be enough for my learned brother, when he comes to comment upon the circumstantial evidence in this case, that the facts are always and throughout consistent with the supposition of the crime of adultery—unless he can go further and show that they necessarily lead to that conclusion, and that they are utterly irreconcilable with the hypothesis of innocence, they are worth nothing for any purpose. We take with us also, gentlemen, in this investigation, what I had the honor to lay before you yesterday as a universal maxim of life and society, that that kind of intercourse between a married woman and another not her husband, without his knowledge, which we generally denominate as a flirtation, is utterly unavailing to prove the crime of adultery, for the reason that it has been universally observed, that it may be entirely consistent with the innocence of the accused. I had the honor in bringing that maxim to your recollection yesterday, to advert to Addison, Elgeworth and Scott, as another by whom it has been recorded and proved, and, by the kindness of my learned friend, I am enabled to bring to your recollection another recognition of that fact, in one of those pregnant and solid judgments, of that great and stern moralist, Dr. Johnson: "Depend on it, sir," said he, "there is a vast distance from familiarity to that great and last crime, a vast distance." It is quite apparent, therefore, that in order to make anything of this series of conduct on the part of Mrs. Dalton, the libellant is called on to go a great deal further, and I submit it is perfectly clear that he is to go so far and take this step; that taking her entire little life as before us, from January 1835 down to the last letters which she wrote to her husband in answer to the cruelty of this libel, and to show you that she had conceived a passion of illicit love, so vehement and so absorbing towards Sumner as necessarily, when opportunity was afforded would lead to the commission of the offence with which she is charged. They must take that step, or they do not advance in the least degree the inference of guilt from the circumstantial evidence of this trial.

Now, I am about to have the pleasure to lay before you conclusive proofs, that if you take that life from January down to the last period to which the evidence

in the case has traced it, it is perfectly manifest that the general and habitual tone of her sentiment, of her affection, was steadfastly for her husband; that she loved him affectionately, deeply, constantly, and always, and although might have been a little influenced her love a little suspended, by this intimacy, which she and all of us so greatly regret, that it revived again, in all its original strength, the moment the sharp realities of life brought her back again completely to herself. And I shall respectfully submit, in the next place, that whatever your opinion may be as to the extent to which this intimacy with Sumner had proceeded, and how far her interest in him had been carried, it is perfectly plain, on the evidence introduced by the libellant himself, that it stopped short, wholly short, of the commission of the last great offence.

This is now the point to which I have the honor to call your attention; they begin by putting into the case two letters purporting to have been written by Sumner to her, one of them opened by her, the other never opened by her, both of them found exposed upon her bureau or in her drawer, or however found, wholly accessible to him, and they will rely upon these letters in the first place, as affording some evidence that she had come to love him. I respectfully submit that they utterly fail to afford any such evidence to the judgment of this jury. Remember, first, I pray your attention to this: that of the contents of any letter of the respondent to Sumner, there is not a particle of proof before you; that she wrote some letters to him is a fact in the case; one is proved to have been delivered to Sumner by Miss Snow, at one of the saloons, with the request that he would not show it to Porter; and I believe I had the honor to say, yesterday, and attach sufficient importance to the matter to repeat it today, that it will be for you to judge whether there could, by possibility, have been contained in that letter, evidence of guilt between her and him, if she felt it necessary to accompany it with a caution that it should not be exhibited to anyone. One would have thought that such a secret as that was safe in the breast of the guilty and erring boy.

I therefore submit, that so far as the letters are concerned, although there is not a scintilla of evidence as to their contents, it is perfectly manifest, from the circumstances attending them, that they were equivocal, vague, light, and contained no serious admission of secret guilt, which could be invoked as evidence in this case. With regard to the letters of the respondent to Mr. Sumner, they have been destroyed by herself, under such circumstances—which I shall have the honor to submit to you, and insist much upon—as affords conclusive evidence, that however far her feelings strayed before, the very instant she discovered she had mistaken the man, the very instant she discovered there was an intelligible proposition, an intimation to crime, she snatches her letters from him, tears them to pieces and throws them out of the window of the carriage. I shall submit to you, therefore, this circumstance, to show you that she had already arrived at the most significant and important pause in the history of her connection with Sumner. And now, gentlemen, when I have said this, it is necessary for me to go further and remind you, that if you have read in newspapers or heard by the hearing of the ear, the contents of any letter, purporting to have been written to the respondent in this case, you are bound to dismiss it altogether from your minds. Remember that she declared everywhere, and consistently, that the letters that have been exposed were forgeries, and there has not been offered one tittle of competent evidence, admissible by the rules of law, to show that they were not forgeries. I entreat you, as you would acquit yourselves on your oaths, to try this case by the law and the evidence, if you have read such letters, dismiss them instantly from your minds.

This will make it proper for me to say a word in regard to another part of the evidence, which attracted a good deal of your attention; you have heard my learned friend offer a great variety of evidence which his honor

has decided to be inadmissible on the trial of this cause. That evidence my learned associate and myself felt ourselves bound by professional duty to our client to object to. We knew very well, from other sources of information, how much Dalton's mind had been poisoned, and how much the public mind had been poisoned, by the currency of scandal and slander which were only scandal and slander at all; and we have felt how indispensable it was to us that your minds and the mind of the Court should be confined directly to the main issue on trial, and that it should not be distracted and misled by irrelevant and collateral and unimportant matter, the tendency of which is to mislead and darken, not to guide to the determination of truth; and we have therefore had occasion repeatedly to call upon the judgment of the Court, and object to the admission of testimony, as incompetent in point of law; sometimes it has so happened that the Court has sustained our objections and excluded the evidence, and sometimes he has ruled against us; when he has admitted the proof, we have yielded to the ruling of the Court, and met it fairly and fully, and when he had excluded it, I need not say the offer of that proof, and the statement of counsel as to what it could come to are to pass by you as the idle wind, to which you are to pay no more attention than to its breath—not a particle. Suppose it were otherwise, what would be the result in this case? The very statute under which you are assembled for the first time, itself ordains that the Court who presides at the trial shall be charged with the determination of all questions of law arising, and of these the most important is the question of the competence of proof; on his responsibility he has performed that duty. If in the hurry of these proceedings, it has happened to his Honor, as it happens and must happen to every judge, that errors have been committed, every one of them may be revised, and every right of every party, on a solemn reconsideration by the Supreme Judicial Court be carefully preserved. But if that statute is disregarded, if against this ruling of the Court you should set your imaginations afloat, to speculate as what could have been proved, or might have been proved, consider how irretrievable may have been the consequences, to the party now on trial before you. On that judgment of yours we have no opportunity for revision, by this Court or by anybody. On that which is behind we have no opportunity to try the facts, but you are bound to take it for granted, that as we have met fairly and fully, all the evidence admissible in point of law, so everything which has been ruled, if admitted would be fairly and fully considered and explained. May I remind you, therefore, with the profoundest respect of the oaths you have taken, to try this cause according to the law, and the evidence given you, not the evidence withheld from you; and therefore I have to repeat, gentlemen, and with some earnestness, that I beg you to take with you throughout these investigations, the fact that there is not a solitary particle of proof, from beginning to end, that Nellie Dalton ever in her life, wrote a letter to Sumner, that contains a particle of evidence that she loved him at all; all that is to be laid out of view, and then we pass to the consideration of the proof actually before you.

They have introduced to your notice, for some purpose, two letters purporting to be addressed by the deceased to her during their acquaintance. The first observation I have to make on these letters is this: that there is not an expression in them which the jury are warranted in point of law to take as proof against the respondent that she loved Sumner lawfully or unlawfully, little or much. They were admitted, as the evidence in this case show, because there was some proof, though very slight proof, that she did, at an interview with the Daltons, on the Sunday afternoon after the Shawmut Avenue tragedy, admit that she recollected an expression or two which had been alluded to as having been addressed by Sumner to her. They were admitted, on the ground that that made them evidence, in point of law; but I submit now, that when we come to appreciate the facts in the case, it would be unlawful and unrighteous, that it contra-

dicts every emotion of conscience, justice and honor, to take these letters, as they stand, as evidence of her affection for him. Recollect that one of them had never been opened by her at all,—and God forbid that letters addressed by one party to another, and lying unopened upon her hands, should be deemed and taken as evidence of anything! No, gentlemen, they are proof in the case for some purpose, just so far as they are the proof of the guilt of Sumner, meditated or premeditated, they are evidence in this case; but as proof of Helen Dalton's affection for him, they are totally incompetent for any purpose. Do you consider they were not even written by Sumner at all? They are said here to be, on the evidence, copies of copies quoted, and my learned brother has admitted, in attempting to introduce the deposition of Gibbens, that they were not written by Sumner—not one of them! On the contrary, it was said by my brother Dana, that every one of them was written by a witness who is not here, by a man who he did not legally bring before the notice of this jury, and there is no evidence here competent for you to proceed upon, that if that witness were before you, it would not be made most apparent to you that they are worthless and worse than worthless, as an expression of the affection of Helen Dalton for Sumner. There is not a tittle of evidence that they were in Sumner's hand writing. His brother has been repeatedly upon the stand, and yet there is no evidence that they are writing of Sumner. I cannot allow my learned friend to escape from his opening statement, that Sumner, not feeling himself competent to the composition of his own letters, invoked the aid and hand of a more practised draughtsman, whom he named by the name of Gibbens. So he opened in terms, and I again solemnly ask you if it would not be dreadful, to take this strained, transfused, and second-hand matter they produced before you, as evidence of the real sentiments of Helen Dalton; she says something to Sumner, writes something to Sumner, Sumner shows something to Gibbens,—and thereupon this practised paraphraser, with his head full of novels and small poetry, and grosser and more fantastic and ridiculous trash, works upon it, colors it, exaggerates it, and these things come here, one of them unopened, as proof of what she had originally said! I am sure there is no mind on that jury that does not go with me in my attempt to appreciate the worthlessness of that proof. The law never allows hearsay evidence to come into any trial for any purpose; the demand of the law is that the original witness shall stand here in the light of the Court House, and before the jury, and have counsel on one side and the other, probe him and find out what he really knows, and out of what equivocal, doubtful sentiment it was, he manufactured such an absurd, and nonsensical rhapsody as this. I submit that if you had the proof before you you would find the facts to be these: that Sumner said to Gibbens that there was a pretty girl, that she liked him and wanted to cultivate his acquaintance; and thereupon we have all Moore's lyric poetry, and all the folly, and stuff, and nonsense, that this amanuensis, coming between the parties, and wishing to display his skill in amatory composition, chooses to work up. I submit, gentlemen, that these letters are not evidence, scarcely competent in point of law, and that you will lay them aside with the contempt they deserve. When this respondent found her character and her sentiments were misconceived by this party, she snatched her letters frantically from his pocket, tore them into fragments, and threw them out of the window; and thus all knowledge of the contents of those letters, is beyond our reach.

Having said thus much, we may advance to the consideration of those two letters for another and very different purpose. And in advancing to a commentary upon them, I find it difficult to manage that commentary with entire delicacy and propriety of speech, and I have therefore to pray the candor and manliness of the jury while I submit what seems to me the bare result of those two letters, taken by

themselves; you will excuse me in view of the great duty I have to discharge.

Take, then, that first letter written on Wednesday, the 14th of November, two days you will observe before the discovery, and the tragedy of Shawmut Avenue. And the first commentary I have the honor to make on that letter, is one which I borrow from the language of the great ecclesiastical judge, in the case I referred to yesterday. It is perfectly manifest from the reading of the letter that he had not, when that was penned, had carnal knowledge of her body. I ask you to read it, not here and now, but where you can read it, calmly and quietly, and to read it in the light of this explanation, ask yourselves if the writer of that letter is addressing a young and comely married woman, of whose person he has had carnal knowledge? I submit that it is perfectly plain and clear that he has not yet had such knowledge. There is no allusion to the past, no allusion to bread eaten in secret, no allusion to stolen waters;—I cannot pursue the explanation further, but there is no dwelling upon new and rapturous delights; the language directly points to the contrary. "I cannot much longer endure this separation from you, this denial of what I desire, *I cannot much longer endure;*" but not one word from first to last, such as would inevitably have been uttered by an ardent young seducer, who had had one taste, and was burning for more. I put it to you, I put the cause on that interpretation, and as you shall find it, you will find that whatever else had happened or was likely to happen, it is perfectly plain and clear that there had been as yet no commission of crime.

"It has been argued," said the learned judge, in the case to which I referred yesterday, "that these letters show actual guilt had passed; but, on reading them, and after the argument, I think they contain no unequivocal reference to, nor inference of, any act of adultery committed. The parts relied on are capable of explanation, though attended with much suspicion; and when the oral evidence has entirely failed in establishing the offence, and no occasion can be pointed out when adultery was actually committed; and when even these letters do not refer retrospectively to meetings at any particular time or place, it would be too much to say that such equivocal documents can be admitted as sufficient and conclusive proof. The letters seem to show that she had consented to an interview, and had promised that she at last would meet him at the Pavilion. They are, as already observed, strange, extravagant stuff, breathing the most ardent affection, and soliciting interviews, written by a profligate libertine, professing something like an honorable attachment to a weak, vain, silly woman: he a married man and she a married woman. It was highly blamable on her part to allow this correspondence, but it is hardly possible [and this is the point to which I beg your attention,] considering the profligate character of the writer, but that that they would have contained some strong and unequivocal reference to an adulterous connection having previously taken place, some more direct and more gross allusions to past criminality, if she had surrendered her person."

I pray your judgment, gentlemen, applied to the letter here on trial. The second observation I have the honor to make, is one of equal importance, and is perhaps more favorable to the respondent and to Sumner, in the view we take in this case. I submit that it is perfectly manifest, from this letter, that he had discovered that he had offended her, wounded her delicacy, and excited her alarm. "My best beloved, dearest Nellie," he says, "forgive me, if in a moment of thoughtlessness, I have said or done ought that could wound your feelings; forgive me, if the excess of my love has caused me to express myself too warmly."—[evidently recognizing that he feels that he had done so.] Judge you, gentlemen, if he is not here upon his knees making an apology to her; if he is not aware that he has said or done something at which she took a momentary alarm, and on the instant, judge you if he did not attempt an apology, and if he was

not with delicate regard, attempting to make that apology here. Judge you, also, if that paragraph of rhapsody, of nonsense, of folly, on which my brother is soon to comment, is not rather in the nature of an excuse for the writer, for having committed an offence, than a solicitation of crime. But this, gentlemen, is a commentary I cannot very delicately pursue, and it is not necessary for me to do it; "a word to the wise" is more than sufficient in such a case; I ask you to read the letter in the light of the two views I have presented. Does it not negative absolutely the supposition of guilt down to that time, the 14th of November, and does it not place him in the position of a respectful and earnest, and fluent apologist, for having wounded her delicacy of feeling by his indiscretion. Then, gentlemen, so far this case is demonstrated to be a case without guilt.

The next letter was written the day after, and was never opened.

The first observation I have the honor to make upon that, is one to which I am sure you will attach considerable importance, and the result is, that there is not a scintilla of evidence how she answered it; and I ask the Court to instruct the jury that it is not competent for them to infer from this second letter which she never opened, that she answered it reciprocally and warmly, or with a promise of surrender on her part. There is no proof as to what were the terms of the reply—none in the world. From the mere fact that he sends her a letter, which she never opened, I submit that when you take these two facts in juxtaposition,—that she snatches her letters from his hand, tears them to pieces and throws them out of the window under his eye, and that she leaves one of his letters unopened,—it becomes conclusive evidence that she has come to a pause, that she has lost her interest in him, that she has discerned what he is, and what is the view he takes of her, and has taken her stand.—But I am arguing here that there is no proof of showing the terms of her reply.

Permit me to make a word of comment on that second letter. It is dated the 15th of November, the very day before the last ride, the only solitary ride she ever took with him in her life;—it was written the day before the act of adultery was committed, if it ever was committed; and now I pray your attention to it in this view,—what information do we derive from that letter as to the way in which she had met his other letter? You will be struck, gentlemen, at once, it seems to me, with the total change in the tone of this letter and the one of the day previous. No more rhapsody, no more hope, no more licentious solicitation, no more trust that the manifestation of warmth in him would kindle a similar feeling in her breast, but the whole tone collapses, softens down to a mere tame and respectful note, which, we say, satisfactorily demonstrates what her answer to him was. I shall respectfully endeavor to bring to your own judgment what that answer was; and I say, therefore, that she accepted his apology coldly, though as satisfactory; she admitted that the plea he had urged for his indiscreet warmth, might be allowed to him; she expressed her trust that he would never offend in like manner again; that her feelings being interested in him, she felt confident that he would not abuse those tender feelings, if they could be so termed. That that was the spirit of her reply, from the whole tone of his second letter, is perfectly apparent. I cannot help observing in this connection, that there is a single expression which I think will prove satisfactorily to your minds, as it does to mine. He says, "You say I must be tired of your foolish notes." Now, gentlemen, I put it to your knowledge of life, as men, if this language emanated from a woman, who had answered his letter of the 14th, reciprocating his warmth and yielding to his solicitations? If she had written back to him, that he who had won her heart should have her person; if she had written back that she understood him perfectly well, and she was his, do you think she would have fallen into this foolish prattle about the tediousness of her notes? On the contrary,

would she not have known, would not the burning passion, flaming in her breast, have led her to know, that no letter, though written by Rousseau, or Abelard, or Eloise, could have been half so sweet or dear to him, as a letter of hers however briefly and simply expressed, according to him the boon he asked? Would she not have known, and can you conceive, from your knowledge of men and women, from your observation of the human heart, that she should not know, that she had written to him, a letter that must have been the sweetest he ever read, and the one he most longed to receive—in the pleasure it afforded him forgetting everything of tediousness in the composition! I have therefore to submit, gentlemen, in this view of the case, that it follows conclusively to my mind, that she had coldly accepted his apology, turned away from his solicitation of guilt, and falls naturally and like a woman, into an apology for the tediousness of her notes. I ask my learned friend, who knows so well from observation and from books, the workings of the human heart, to meet that argument if he can. I ask him if a woman accepting criminal overture, apologizes for the foolishness of her note? I ask you and every man who hears me, does she apologize for the foolishness of her note, or is it the little vanity of female authorship, borne away in the exaltation of a new and rapturous emotion. I ask you gentlemen, to judge, and with that commentary I leave these letters.

And now I submit, Mr. Foreman, that my commenting is entirely warranted and sustained by the evidence in the case. Do you remember that that letter, answering hers was never opened, and do you believe it to be within the bounds of possibility, and is it according to the action of the passion of which I am speaking, that if she had written to him reciprocating his feeling and making a surrender of her person, she should leave the letter, written in reply to this surrender, unopened? Would she not have thrown herself ravenously upon it? Would she not have torn the seal from the letter, to see how that surrender had been met? On the contrary, there it is, there it lies unopened by her. If you can imagine anything, in the action of the human heart, that give the least probability to such a supposition, you will say so here. I find in this, a proof of what I have the honor to say, that however her vanity was interested by Mr. Sumner, the very moment she discovered what he sought of her, what aims he had, and in what it was likely to terminate, she decided at once to abandon him.—Therefore, her letters are torn to pieces and thrown out of the window. Therefore, it is upon the testimony of Mrs. Coburn, and two of the Daltons, called, all three of them, by the libellant, she declares she never meant to see him more.

There and then, gentlemen, I respectfully submit, we bring her down to a most appreciable and most important pause in relation to this intimacy. Have I overstated in the least degree? I pray your attention, then, to what follows. We have arrived to the day of the ride to Brighton and Watertown, and thus far there has been no guilt, no criminal possession of her person; and we find breaking out, unmistakably, the evidence that the lessons of childhood, the promptings of her own principled love, the lessons of her father's family, daily and nightly service, were beginning to regain their hold upon her. She leaves that letter unopened, she throws hers away, and decides never to meet him again. And then, gentlemen, what is the evidence they lay before you?

They call young Miss Dalton, and they have also called Mrs. Coburn, whose title to credibility is not to be denied by my brother, although he may say that she is to be controverted by other witnesses, on some particular points; and these witnesses prove, that the Sunday night after that tragedy in Shawmut avenue, under circumstances the most impressive and affecting, she was called upon for an explanation in this matter, and she declared, exactly as she did to Mrs. Coburn, that the circumstances of her ride with Mr. Sumner were these: that she was walking out, without the slightest expectation of seeing Sumner anywhere;

that he met her, in a chaise, and invited her to ride with him, promising to carry her to her sister's; that she reluctantly consented, and got into the chaise; that then he said, that a long ride would be no worse, or not less pleasant, than a short one, and then drove with her to a hotel at Brighton, and then and there, or at Watertown—upon the collection of evidence, it is uncertain which, and is unimportant any way—he then and there made an offer of personal familiarity; that she then and there instantly repelled him, burst into tears, threw him from her, expressed her surprise and indignation, and commanded that he should instantly drive her home; and that accordingly, under that compulsion, he started to drive home. She declares, at that time, that she insisted upon her being sent home in another carriage; he told her that it was not practicable, that there would be no harm done, and she must ride with him; that they started, and came quietly home, only stopping at another hotel long enough to water the horse; that she refused to get out of the chaise, and they drove around to the place where the water was; that there a man, connected with the house, suggested that she had better get out, and go into the house, as her presence there would attract notice; that she did so, walked into the parlor, and stood at the window until the horse was watered, and then they came home together; and that the last arrangement made between them was, that he invited her to meet him at Fera's saloon the next day, when he would completely satisfy her, and apologize to her, for what he had done.

This is the testimony, introduced by the libellant himself, in this case. It is the declaration of the respondent, but it is offered in evidence by the libellant, as entitled to credit, and I have only to submit, and I repeat, under the direction of the Court to the jury, upon that matter, that it is entirely competent for you to believe upon your oaths, that every word she uttered is entirely true. The evidence is offered by them as entitled to credit. They put her declarations into the case, to affect her. If they are against her, and are credible, they are to be weighed. If they are in her favor, and introduced as credible evidence, they are to be weighed; and I put it to you, upon your solemn oaths—and it may be a very important suggestion to guide you—that you are warranted in believing every word she then stated, to be true. You need not corroborate it by circumstances to which we have made allusion; you need not call in the aid of this fact, that she had already sunk down on her knees, with her hand on her bible, asseverated her innocence of the act; but, taking these declarations as laid before you by the libellant's witnesses in this case, I pray your judgment, under his honor's direction, that you are perfectly warranted in believing every word to be true. I go further and say, that it is your duty to accept them as true, unless they are incredible evidence in themselves, or are found to be false. I apprehend that the rule of law goes just so far that you are to look into this case, and if you find credible proof that she declared and swore to a gigantic falsehood, you are to say so; but if, on the other hand, there is no credible proof to the contrary in the case, then unless there is an intrinsic and inherent improbability in the statements themselves, they are to be taken as decisive evidence upon the points to which they refer. Do not for a moment fear that I am pressing this upon your minds beyond the rule of law. The libellant has had the whole field to himself; the charges are made upon her declarations, and the jury are perfectly warranted in taking them for truth, and they are bound to take them for truth. And I pray your attention to this point, and the interference of the Court, if I go a hair beyond the strict line of the law, unless some credible evidence—not John Coburn, or Edward O. Coburn, or Mary Hunter—is invoked, to contradict them, unless you find conclusive evidence that they are entirely improbable, you are to receive them as true.

Is there then anything in the least degree unnatural or impeachable in these declarations as they are brought

before you by the other side? Is there anything at all improbable or unnatural in the supposition that this young and comely woman, religiously educated, and unusually modest from her earliest childhood, had suffered her fonder feelings a little to mislead her? and had been drawn into an intimacy unknown to her husband, and which she so deeply deplores with tears, and yet, when she found that it was tending to guilt, and what a chasm and abyas of ruin was opening before her, that all the lessons of her childhood, and all the instincts of virtue, assumed their habitual control, and she instantly decided to pause? Is it not an evidence of that recovery of her former self that she suffered his last letter to be there without looking at it? Is it not through the influence of that recovery that she snatches her letters from his grasp, and tears them to pieces, and throws them away? Is not that the most probable supposition, that she had resolved to have no more to do with him, but that still, looking upon him with some degree of interest, when he overtook her in a chaise and promised to drive to her sisters, she should go with him in her conscious innocence? Is it at all inconsistent with this view, that when he proposes to drive her further, she should acquiesce? And when at the first place of stopping, he repeats, or for the first time produces the project of personal familiarity, was it not then and there her virtue which caused the outflow of that sudden burst of tears, when she instantly flung herself from his arms, and demanded to be restored to her husband and to her duty? I ask you if it is not perfectly natural and perfectly probable, and if we have not arrived at a stage in this case where it all terminates satisfactorily, with competent and proper proof that her interest in him, whether love or no love, did not lead to guilt?

I suppose my learned friend's argument will be upon this point to bring in his ecclesiastical law books to prove that they have somewhere broached the doctrine, that if there is proved to have been unlawful love and opportunity, the jury may infer the crime.—I ask your Honor to instruct the jury that whatever such authority may be quoted, we have no such law as that in this Commonwealth; and upon this point I pray your Honor's attention to the case of Dunham vs. Dunham. I claim that we are not bound by it, whatever those works may declare. They seem to be of the opinion that where there is unlawful love and an opportunity, adultery is necessary as a sort of chemical result. Do they forget that there is such a thing as free will, such a thing as conscience, such a thing as recollection of the teachings of religion, such a thing as shame, such a thing as a point at which to stop and a point from which to go back? They forget the inherent virtue that pervades the nature of woman. They forget such a word as that. And therefore I say that the doctrine is old, poor, monkish, artificial, and has never been adopted in this State, and never, as my learned brother will present it to you, in any country; for I believe the work holds that if it turns out that the opportunity did not as a matter of fact carry the parties to the guilt, there is an end of it. I contend that there is no divorce to be granted for loving or for having an opportunity, if the parties do not indulge. There is no proof of such indulgence; and therefore every word of the evidence that I have brought before you this morning, is proof to the contrary. Upon this case it stands demonstrated, and I entreat your judgment upon your oaths to say, that whatever fancy or vanity there may have been, her heart was not effected, at all events she did not yield so far as to carry her beyond the line of perfect personal innocence. I imagine, gentlemen, that this is pretty nearly the end of the case, and I might here invoke your judgment and leave it.

But as I cannot know what line of argument my learned brother may pursue, permit me to go a little further in the inquiry how far her feelings had become really engaged in Sumner. It is a matter of no great interest to us, and there may be some difficulty in developing and tracing it; but I shall by and by answer that more fully, by some of the proof

which I shall presently call to your attention.—There are two or three circumstances relied upon to show that she had become interested in him;—but whether interested or not, whatever incidents may be relied upon to show any interest, I submit it to you that none of them carry with them the actual commission of crime. They are unpleasant, and among them are many recollections which will rest the longest upon her own remorse; and it is fit and proper that I should allude to them for a moment. There is evidence that Sumner and Helen Dalton had exchanged rings, and that he had given her a book. We have these statements from the same witness, Miss Dalton, her apparently trustworthy and apparently respectable sister-in-law, and of whose testimony Helen Dalton might well be proud. It appears that she never made any secret of the ring or the book. On the contrary, she showed both of them many times to her and another young lady. She called her attention to the name upon the ring, asked her if it was not beautiful, and said it had been given her by a young man, and that she had been bothering Frank about it, and trying to make him jealous. The whole matter was open and unconcealed. It was apparently merely the production of an idle and superficial vanity, and it had no reference to anything further, expressed or implied unequivocally.

Then there is a statement with regard to her husband's ring, which may be susceptible of a great deal of rhetorical enforcement by my honorable friend. But what does it all amount to, but to illustrate one of those phases of revulsion and reaction which shows that the young woman is still far enough from the surrender of her heart, and still farther from the surrender of her person. She took off a heavy ring from her hand, and Sumner takes it up and puts it upon his own hand, giving her one of his.

But she did not leave it there. A little while after she took it back, places it again upon her hand, and puts off upon him one which was very fairly expressive of her regard for him—an old second-hand ring with the name erased. She takes back that which is an evidence of her love and duty to her husband, and his love to his wife, and she gives away one marking the frivolity, the vanity, the nonsensical intercourse; re-deeming her altogether, I submit, from a suspicion of a deeper feeling or a more guilty purpose. She takes back her husband's ring, and gives him one which is second-hand. An old book upon the one side, and an old ring upon the other side, her husband's ring taken back and worn again upon her finger, as her husband's image and her husband's love were all the while habitually in her heart—that is all there is of it. Miss Snow tells you that she knew nothing of the rings or the books, but, by the way, mentions that on one occasion he had said he had sent her a note and a bouquet, and she had sent them back again.

And now let us put this together in one view, and then leave it. There is the destruction of her own letters upon the first approach to too great a familiarity; there is permitting his letter to lie unopened; there is the refusal to accept the note and the bouquet; there is the taking back her husband's ring;—there is the inventory. And in the indulged drive with him, there is the proffered familiarity met by bursting tears and by the instant demand that they part, and a determination to part forever. And so, I respectfully submit to you, does this matter of their intercourse and affection remain upon the evidence until you arrive at the time of the Shawmut avenue tragedy?

I do not know whether my learned brother will think it worth his while to comment upon a little evidence, which, however, they introduced, and I cannot therefore pass entirely unnoticed. Some of it, particularly that of Miss Coburn, may be deserving of our attention; while that of Mary Hunter I maintain to be unworthy of it in the least degree. Upon what they may argue sometimes in Sumner. You will scarcely have forgotten that Mary Hunter told you that on the day of the flogging affair, between the time when Porter was

beaten and the time when Sumner was brought in to be beaten also, she heard the respondent tell her husband that he was no husband of hers; that he should not be or would not be her husband; that she hoped a dagger or two would be stuck in his heart; and all the rest of that testimony. They gravely produce such trash as that, to show you that she shamelessly avowed to his face that she preferred Sumner to him. I do not believe that if I had passed this over my learned friend would have said anything about it; but it was introduced, and I suppose was intended to make an impression. To be sure Mary Hunter is compelled to admit that, on that very night, Dalton, who had heard it all, slept with his wife; and that from that time forward for three weeks he held her upon his own pillow to his heart, which had not yet condemned. You are glad, I apprehend, to remember, gentlemen, that it is established by the series of letters we have laid before you, that he continued to declare his love for her, and his full belief that she reciprocated that love. And yet this woman is brought here to make you believe that under the circumstances that took place that night, she turns round and tells him to his head, You are no husband to me, and Sumner is the man I love.

Miss Adelaide Coburn throws some light upon that story; and I advert to it in order to show you how insignificant it all is. It turns out to be exactly this. It is very evident that the circumstances were not such as to place her in a condition very favorable to exact accuracy of statement, but she explains it perfectly; and I submit whether it is anything at all inconsistent with a warm and true affection for her husband in the heart of our respondent. Porter had been beaten and sent away. The screams of murder from half a dozen windows have just died away; and then Dalton was seen to be about going out of the house manifestly to seek to bring on another great outrage and violence. In that state of things Mrs. Dalton entreated him to stay with her. What was the language of her address? "I entreat you, Frank, remain with me." Those are the very words stated upon the minutes and in the printed reports of this evidence. "Remain with me; remain with me," was her language, in the affectionate and hysterical conflict of emotions, in her fear of some indefinable horror or outrage, fearing for him, fearing for Sumner, fearing for another mob brought again around the house by another cry of murder. She cries to her husband, Stay with me; and in that frantic exhortation she adds, You are no husband if you will leave me now; stay with me or you are no husband. My friend is welcome to the evidence, if he will only make the proper use of it. Have we not seen ten thousand parallel cases, and is not that exactly what we should expect to find her, praying him not to go, presenting him every inducement not to go, and even adding, in the language of frantic and imprudent imprecation upon him—I hope you will get killed if you go; for God's sake stay with me; stay with me or you are no husband; I hope you will get killed if you go. Is it not a fine touch of human nature in the heart? I submit it to my learned friend, and pray his commentary upon it. And inasmuch as he meets my explanation with a smile, may I be permitted to ask him if it has not been regarded a fine touch and true to nature in the Roman poet, when he drew the Carthaginian queen, when she had been driven even to unsex herself in entreating Eneas to remain, and appealed to the memory of that secret meeting in the cave during the storm, when she entreated him by his offspring unborn and by the future of Carthage to stay, and then, when she found him still fixed and determined upon his departure, breaking out before the tempest of her passion and praying that he might perish by the storm and the whirlwind and the flood, without the care of friends or gods, upon the angry sea; and again, when another reaction came, falling back fainting, and carried by her servants to her couch! And do we not find that same fine touch of nature in the mother or the affectionate sister, every day of our lives, when she says to the fro-

ward boy, "Stay at home or I hope you will have your head broke for going out at such a time as this?"

That is all there is of it. It is exactly the outbreak of human nature which we constantly witness; and I ask you if this is not ten thousand times more probable than the enormous, foolish and barbarous explanation which Mary Hunter affords of it. She represents her as saying all this through fear for Sumner. She is trying to prevent her husband from going out to beat Sumner's brains out, and she takes this extraordinary method of accomplishing that object—she avows to him that she loves Sumner better than himself. To defend her paramour from her husband's anger, she tells him to his head that all his suspicions are perfectly just—the very act, the very word that would be most sure to kindle his jealousy into madness, and drive him to acts of desperation in revenge. Nobody can believe it for a moment. After all was over, Dalton, who hears it all, goes back and lives with her again. How much fear there was for Sumner, how much fear for him, how much of hysterical anxiety there was in it, I need not attempt to show you. Dalton himself has testified to his belief upon that, his belief that she always loved him better than any human being, when, after this had all passed over, he folded her still to his heart. You will judge, then, whether these circumstances are not worse than worthless, as an evidence of any wrongful state of her feelings.

And now I ought to recur to the expression which Adelaide Coburn states that she heard, the hysterical exclamation, "I love him, I love him." Judge ye whether it be possible that any woman of her nervous excitability, fainting and almost shrieking at the mere opening of the testimony, susceptible and nervous even beyond the condition of womanhood, can be believed for a moment, under the circumstances, to be a reliable witness under the circumstances, as to all the particulars of which she may testify; whether explanatory allowances are not to be made in consideration of the particular position in which she was placed. You will remember how she was situated when she thinks she heard those words. Porter had been beaten and thrown out of the house. Sumner had been brought in by these two young exasperated husbands. Sumner is questioned and he makes his replies; and when he sees that his fate is sealed, he cries out with that cry so eloquent that it would raise every hair upon her head, "Oh, Nellie, save me; don't let them hurt me." Mrs. Coburn falls down in a fainting fit. Adelaide procures a basin of water and attempts to restore her; and while her attention is so engrossed, and her mind so excited, this timid and susceptible woman thinks she recollects that cry which at last terminated in the cry of murder, murder. I ask you if all that scene is not in her mind as the dream of a fever; and if she does not recall it now like the wandering of a dream? I ask you as men of sense and character, if it be possible that a woman of ordinary intelligence should so far forget herself and her aims as to avow frantically a love for Sumner at such a time as that? I think, gentlemen, that you will agree with me that her testimony upon this point that not even hysterical paroxysms would lead Helen Dalton to the madness of such an outcry as that for such a purpose, to such inconceivable folly as to believe that the only possible method for her to rescue Sumner from the grasp of these two husbands was to avow that very love for which they were about, apparently, to beat him to death. Nobody will believe that for a moment; and, therefore, I apprehend that the conclusion to which you will come is that in the circumstances of her situation, her mind was not in the condition to be certain of the words of the cry or of the speaker who uttered it. I must not allow you to forget, but must reiterate in this connection, that Dalton hears it, whatever it was, and that he loves and treasures her still.

I believe I have now gone over all the evidence upon which the learned counsel have relied here to show how far, to what extent this affection of Mrs. Dalton for Sumner proceeded. I have respectfully submitted to

you that it was a light, transient, superficial fancy, and no more; for the very instant she discovered that his designs went further than her virtue and her instincts approved, they were met and repelled. If that be the result of the evidence, of course all this part of the case is at an end. But I am only too happy to call to your remembrance, that in regard to the whole body of evidence which is laid before you, if you take her entire life as it is brought before you from Jan. 1855, when their courtship began, until her very last letter in answer to his libel, which terminates the series, you will find it marked by a sweet, passionate and beautiful love for her husband, as an entire little life, one long, true, constant love, never interrupted, never displaced. Once and for a few weeks losing somewhat of its entire control, but recovering it again in a moment and flowing strongly and beautifully as ever. Let me remind you how the evidence stands in relation to that fact, which is of a good deal of importance and authority, in appreciating all parts of this case, and may do very much towards determining whether she is yet a wife fit for the arms of Dalton and deserving your favorable verdict. Weighing all the circumstances, what do they show us?

She was a child at school when Dalton sought her honorably in marriage. There is no doubt, for Dalton feelingly and strongly so declared, and I think we had other testimony to the same effect, that she was modest, uncommonly so, and to such an extent that although he met her often, he sought in vain to catch her eye in the street as she walked to and from school. It was only when addressed honorably and openly for marriage, that she yielded him her heart. I submit that it is perfectly clear that Dalton had secured that great thing, a pure and modest young woman's first love. Look at her after life, trace it from the hour of marriage, and you find a uniform concurrence of the evidence in every quarter that she was ever affectionate and fond; that she made his house and his home like another garden of Eden. We have the universal testimony uncontradicted, of everybody everywhere, that she was ever affectionate, ever fond, never away for a moment when she might hope to have the pleasure of his society there, never absent from a meal, never away at the hour of supper, never neglecting a solitary duty of the wife, even to the stitching of a button upon his shirt-collar, but always faithful, always affectionate, always tender. It will add much to a correct understanding of this part of the case to read Dalton's letters to her from the jail, to see whether he then had anywhere any reason to remind her that she was during those few weeks becoming absent-minded, engrossed, or irritable, or that she was at all changed. Not a word of it. There is not a little of evidence to show it, but everything on the contrary demonstrates that at every moment of time which she could find she devoted to her husband, that all that time she appeared the same, and manifested that unchanged and affectionate tenderness and care; that she was never moody, never gloomy, never apparently thinking of somebody, never apparently sorry to see him; never neglectful of the ten thousand little cares through which the demonstration of love exercises and enjoys itself; never absenting herself, but always there, always there through it all. I confess that I attach an importance to all this beyond my own power of language to tell or convey to you, because I put it to your own hearts and your own knowledge of life, if her heart had not been his, could she not have changed during those five or six weeks in her husband's eye. Could she love God and Mammon? Could her heart own two loves at once? No, gentlemen; she would have been changed, she would have been away at his meals, inattentive to his wants, unmoved and unregardful of his case; a changed wife in all. But what is the fact? I submit that it stands entirely demonstrated here, through that whole critic-tire period, upon the testimony of her husband himself, again and again, most fully and unequivocally delivered in his letters from the jail, that she was not changed to him for one hour. This all follows close upon the affair of the Snawmut Avenue Tragedy; and

I entreat your attention that there was no mourning, no tears over Sumner's untimely grave. Was there anything in the three weeks following to show that she did not through all this cling to her old love exactly as before? Did not her husband leave her every morning with a kiss, take her upon his knee, find her there every evening when he came home? A striking evidence how affectionate was their intercourse is found in the fact that when Mr. Gove, hearing the rumor of this scandal and this misery while in the West, coming home distracted and anxious to see what it was that was threatened, is greeted on his return by that first sight which he sees, the wife sitting still upon her husband's knee. And thus those three weeks passed away. One or two little irritations arose, it is true, because she thought he was a little hasty in requiring her to disown her own beloved sister, but yielding in a moment she throws her arms about him and says, "I yield it all; I will do it if you say so; I don't see the reason of it, but I will do it if you say so." And when once he left her upon a certain Friday, we have the testimony of Mrs. Richardson how distracted she was during that absence, how she wandered almost at midnight to her mother's house to seek an explanation, and to complain and cry out that the Daltons were getting away her husband from her. And then, when he goes to the jail, she is like a light in the jail, there every day when she can drag one foot after the other, in order to give him every possible provision which she could afford, asking him to have his *clothes* returned, bringing him bouquets to gladden his pleasure in his cell, pansies "for remembrance," as poor Ophelia says, every hour, every moment, down to the very last, when he goes from the jail, and declines to meet her. I take that whole life together, that little rounded life from Jan. 1855 to Jan. 1856, and I say that there is not in the history of womanhood, a history of married life, a year more beautiful, true, constant. I ask you, is not a love like this worth having? Is it not the evidence of a good heart, a rich heart, a wealth for him who knows how to cultivate it?

Taking this body of evidence, we find on the other hand, as miserable a piece of folly and nonsense as could well happen, weeks of shame afterwards looked upon with abhorrence, weeks of sin as she calls it herself a thousand times over, explaining and asseverating every moment that she was innocent of the great crime; weeks of sin but no week, hour, or moment of illicit love; or even if there could have been an illicit love, one which stopped short, far short, of its final consummation of guilt. Upon this part of the case I should like to have these parties tell their own stories. I should like to read from almost every letter written by him, to evince how perfectly he appreciated her, how affectionately he writes to her; when he knows of her error, how many times in answer to her letters in which she deplores and mourns those errors, he still writes back with love and overlooks it all. I should like to lay before you a letter or two, compared with which all the expressions of an advocate must be poor and worthless, but I almost distrust my ability to read such letters. It would better become my friends, my associate and opponent to read such letters; but I, on the wane of life in the sear and yellow leaf, am almost unable to read them, almost unequal to it. But, gentlemen, you will have these letters before you; you will read their words, you will feel their pulse beating 100 to the minute, all life, and trust, and hope, and confidence, and promise, from beginning to end. There is the very first letter written to him after he was taken to the jail originally written in pencil, but which I have had copied, and you will mark how beautifully this feeling of woman's love appears in every line:

My own darling Husband—

To-day is Sunday; and I thought I could improve my time no better than in writing to my own sweet husband. Oh! little darling Frank, little did we think last Sabbath, when we were so happy, that we should be so soon separated from each other in one short week. Oh, sweet one, what a day I have passed! and when I have thought where my darling was, oh, how my poor heart did ache for you! I did truly pity you in your loneliness. Oh, sweet Frank, if God our

heavenly Father, has so ordered this for our good, that we may soon be together, I will be such a good, true, loving wife to you; I will never cause you an unhappy moment; I will be your own true Nellie to you so long as God shall let me live. Oh, I know that God, if we ask, with true simplicity and meekness of heart, will not cast us from him; and if we have his forgiveness, we shall be so happy, won't we, darling? But, darling Frank, keep up good courage, dearest! If you do not come out Tuesday, you will come out soon, if not then, and then, your own Nellie will come to you every day. So, keep up good courage, darling, won't you? Oh, darling Frank, when I might make you so happy, but instead of that, I have made you so unhappy; Oh, husband, you have always been so kind to me, and we might have been so happy; but if God will only restore you once more to me, I will be so good. Pray night and morning that he may, won't you, darling?

I cannot write much more—I shall tire you; but it relieves me to unburden my heart to you. So now, darling, I hope to see you soon; but trust in God; remember he doeth all things for our good, darling. Frank, when you spoke of my going out, I thought that perhaps you had not quite confidence enough in me. My dear husband, do you, for one instant think that your own Nellie would go out to walk or ride unless her life, her all, her darling Frank, was with her, or unless she saw him as happy as happy could be? Have confidence in me, sweetie! I will please you in every respect. Frank * * * * *

Dearest and best, think that every night and day, your own Nellie, your little wife, thinks of you and prays for you all the time. Again, dearest, good by, at least, for a little time.

Your own dear wife, NELLIE.

Pray that God may forgive you and me.

I submit that to comment upon such a letter as that would be in bad taste, and would weaken its impression; that you see and feel that it is not the letter of an adulteress to her husband who knows that she is an adulteress. That is followed up by a series, which, if I had strength, I should like to read, but perhaps it is unnecessary at this moment to do it. They are all in the very same strain, scattered all over with the same profusion and multiplicity of epithets of affection, the same sense of religion and hope, the same call upon him to unite with her in prayer for both of them. The same or even stronger expressions are repeated everywhere. We find the same repetition of what she sometimes calls her great sin, although she says it has not been criminal. And in reply to them all, we find him making uniformly the same reply—I know you love me; I love you; I shall fly to you from the jail; oh, Nellie, we may be happy yet. You will agree with me, I think, that it was only love which, upon the 25th of February, carried her to the house of the Coburns to meet him. All the time he was in jail she visited him there; she is dying to fold him to her arms. He comes out, and by influences is kept from her. The Coburns are believed by her to have influenced him to stay from her, whether justly or unjustly so believed it is not important at this moment to inquire. On that night, coming to the conclusion that they did not intend he should see her, by a stratagem she forces herself into his company, and there they were locked together until the hour of nine. If you want to know any more of the private state of his heart, you cannot have forgotten that last letter she addressed him, when crushed and astonished by the filing of this libel, which you will remember was read by my brother Durant. You will remember her astonishment, her surprise, her grief, at what he had done, and that she gently reminds him that he had broken that last promise so recently made; then she tells him that much as he has harmed her she will not blame him, and bids him farewell, but cannot refrain from adding, in a postscript, her hope and expectation still of seeing him again. I insist that the evidence all shows a true and loving heart, which has never once ceased to love, which has never loved another.

I submit, then, that up to the 25th of February, her husband, with the full knowledge of every one of the facts and circumstances upon which this case has been urged, with a full knowledge of her intimacy with Sumner, and in the face of all the facts with regard to the exchange of rings, and even the alleged expression "I love him," declares himself, by the most un-quiv-

cal repeated expressions, as continuing still to love and to trust her. Her husband, up to that time, believed her to be innocent of the crime upon the very evidence which is placed in your hands. He knew it all. He met her upon the 17th of November, and that night she confesses to him. On the Sunday night following, in the presence of the Daltons, she confesses again, going over in minute detail everything that had taken place. By the Sunday night following the 17th of November, then, Dalton is in possession of everything relied upon to prove this case, excepting that solitary circumstance of the abortion, brought to his notice afterwards, and which you have seen to be the scandalous and malicious result of a conspiracy against her. If there is any other circumstance in the evidence upon which the counsel for the libellant relies, it was known to him, and he still believed her innocent. Those letters to Sumner, upon which my friend by and by may comment with so much persuasive and eloquent force, those two letters of Sumner's, the fact that she had repeatedly written to him and had destroyed the letters, the fact that she had driven with him, the fact that he had offered her an indecent familiarity at Brighton or Watertown which she repelled, everything which transpired and of which she is ashamed to-day, everything was perfectly well known to him on the Sunday after the 17th of November; and yet we have this great fact in the case, about which there certainly cannot be a particle of controversy, that for three weeks following that time he loves her affectionately, and that during the whole time of his stay in the jail, to the last hour, unless he was practising a most cruel and intentional deception upon her feelings, of which I do not suspect him for a moment, he continued in his letters to breathe the same tone of love and affection there.

I call your attention particularly to one or two of these last letters of Dalton from the jail, because they in my judgment, put an end to this case. If he, upon all this evidence, believes her to be innocent of adultery, can he stand before the jury to-day and ask upon the very same evidence to believe her guilty of adultery! Is not he of all human beings the best qualified to judge of the evidence and to judge of its effect? When, therefore, you look upon his letters, and compare them with the evidence in this case, all of it known to him when these letters were written, I shall expect you to use it in his ways. In the first place you will say, Dalton had heard every word of this evidence, and if it really and necessarily conducts us to an inference of guilt, it must come to us exaggerated. Was not the husband's ear quick to hear, and the husband's eye quick to see? Would he not know if she had said that which was to strike a dagger into his heart? Did not he hear it, if she ever exclaimed, I love Sumner. Certainly he must have heard it, if it had been said. You will say then that there is exaggeration in the testimony as reported to you, if it conducts you to a more severe judgment than the husband himself, who, if anybody, could hear and interpret it aright. But there is another view of this evidence of Dalton's, the just and full import of which I pray you to weigh. I have touched upon it again and again, but I cannot tear myself from it. I cannot divest myself of the impression that it disposes of the controversy. It is the circumstance that Dalton, of all human beings had the best means of judging of the guilt or innocence of his wife, and that his judgment is conclusive upon ours. Not that you may not find him a poor, silly, trifling and fond fool, overcome by her blandishments; not but you may be driven to it, in coming to the conclusion that he could not judge whether she was guilty or innocent. But there is not a little of evidence to show that he has not the average and ordinary share of intelligence, or that he is not altogether qualified to judge for himself. Was not the husband, under the nature of the circumstances, the best and the severest of judges? Had not jealousy quickened his apprehension, and even colored his eye against her? Had he not beaten Sumner almost to death for improper

familiarities tendered by him and not sufficiently promptly repelled by her? Was he not jealous and suspicious, and therefore exactly in the mood to look upon her with more distrust than your hearts would allow to entertain? And when he came to probe the whole matter to the bottom, what human being so well as Dalton is entitled to belief? When he looks back and sees that modest eye, averted in the street, that coy reluctance to yield her virgin heart, that sweet chastity of her original virgin person, who could know as well as he could know how truly she had loved him always? Who could know as he must have known how to catch her in a lie, how to probe her for the truth, how to come suddenly upon her, how to practice a little deception and take her unawares, how to hang upon her sleep and see what she said when conversing only with her heart and her spirit, without the assistance of her reason and her judgment? Who could tell so well as he how sincere was her repentance, and how that repentance was confined to a mere acknowledgement of imprudence, joined with a protestation of innocence or guilt? Who could read that heart, who try that case, like Dalton? I hope I do not underrate the intelligence of the jury, upon whose intelligence so much is depending; I do not fear the action of the tribunal which for her I have invoked; but, with the profoundest respect for you, gentlemen of the jury, and for the Court, I ask what one human being could best investigate the facts and most surely know how to interpret them, could most certainly draw the right deductions from this whole body of circumstances, if it were not he, whom jealousy had exasperated and aroused. He has judged, and he has found her not guilty, upon every particle of evidence in this case but this hideous, incredible, barbarous allegation to which I am coming in a moment.

What changed Dalton when he came out of the jail? I briefly adverted to it yesterday, and may remind you of it again to-day. It was the necessities of his unhappy position. He was on trial for manslaughter, and the penalty threatened to be a severe one. It was necessary that they should be separated; and when they were separated, he fell a victim to the influences which were brought inevitably to bear upon him. You remember the passage in one of his letters, date of Dec. 19, in which he says:

"My dear wife, if the world could understand your case as I do, I should feel happy; but as they do not, we must make the best of it."

There it is; there is his judgment. For myself, I have tried you; for myself I approve you; you gave me your virgin heart and person; you should make me the father of my first child; I have appreciated your error; I have investigated its origin, the extent to which it was carried, and I find you the same dear Nellie that won my heart, and would to God that the judgment of the world was as my judgment, would to God that the opinions of the world would enable me to stand before them and avow thus publicly what I assure you is the settled conviction of my heart and judgment. To show you how long this continued, how long and how steadily he held these opinions, I have to call your attention to letters which he wrote towards the close of the time when he was in jail. We heard something about forged letters. It is to be stated for the thorough understanding of these last letters of his, that he had heard of those forged letters, that he had heard from Nellie that they were forgeries, as by law you are bound to take them to have been. You will see that they never altered his sentiment in the slightest degree, nor colored in the least degree the expression of his affection for her. I shall ask you to take those last letters which he wrote her from the jail; and I entreat you to remember that, there is not a line in those letters from beginning to end, there is no intimation that some dark speech had reached his ear and changed his mind. There is an intimation that necessities control him and make it proper for them not to meet quite so openly or immediately as he had antici-

pated; but there is not a suggestion, from first to last, that down to that hour he had heard a single thing to change his mind—not one. I submit, therefore, that the explanation is entirely in accordance with what I assumed yesterday, that having been compelled by the necessities of his position, as he believes, to live away from her, his mind was perplexed and distracted by the scandal which abused his ear and at last reached and changed his feeling towards her. Now let us see that in these last letters written from the jail, he still loved her, and still promised to meet her, when they could arrange their plans for their future life.—The first is dated Jan. 8th.

[Mr. Choate then read passages from several letters written by the libellant to his wife, which we print entire.]

TUESDAY EVENING, Jan. 8, '56.

My own dear wife:

How very glad I was to see you today! I hope you will never see me again in such a place as this.

Now I can say with pleasure, before another Tuesday comes round, what happiness we both will have in being together!

O, how much pleasure it will be to me to be from this place! It can't be otherwise, my dear little wife, that on Monday next, I shall have the great pleasure of beholding you—you, who I have thought so much of since I have been here.

My darling, you told me this morning, that you have, for the past week, been quite unhappy. It must not be so, my dear. All at home must love you so well; and then, knowing that your little husband thinks of you all the time, and loves you better than any one else in the world, it must make you feel quite happy; and just think for a moment, my dear, I have only a little while to stay here now.

I thought you had a cold this morning, but in having so much to say, I forgot to ask you about it. Now, my dear Nellie, I want you to be very careful of yourself, for I am afraid that you will be sick, and next Monday I want to see you looking and feeling finely as ever you were in the world. I know you will, to please me, won't you?

I did not tell you, dear wife, what I said to Mr. Morse, but I shall very soon. Let me say to you, I only said that to him which would please you very much. I didn't have time to tell you this morning, as we had something of more importance to talk about.

You did not see the bouquets you brought me the Tuesday previous. If you did, my dear, you forgot to say anything about them. It was my intention, when you were here, to ask you if we had not kept them finely.

It seemed as though I could not give you up when you were here this morning—it seemed so cold to have you [obliged] to stand outside. O, how I wanted to be out, so I could fold you to my heart again; but as it was, I could only kiss you, and take you by your little hand; but then, there was a great deal of happiness in that, wasn't there, my dear wife! I want you, after receiving this, to write me a good long letter, and if you did not tell me all that you wanted to when you were here, just write me, as I shall feel so glad to hear from you.

I have liked your two or three last letters very much indeed; they seem to be so good, so full of love; they have been all that I could ask. I hope I can, in writing you, make you feel as happy as I would like to have you.

Continually thinking of you as I do—that you are more dear to me than any one else—I keep my mind in a much better condition than I otherwise would, and time passes much more quickly away; and then again, by night, I have had so many sweet dreams of my dear Nellie, since I have been here. It would take me a long time to tell you all about them; I must reserve them for another time.

My darling, do you recollect, when I first used to call you my "little wife," and how provoked you would get with me for calling you so, and that you would not allow me to call you so? It seems as though it was but yesterday. O, what happy times we had then! I could not be with you enough, I loved you so well.

Father has just been here. He says you have been quite sick since you left here this morning, and here I am, my dear wife, and can't see you. O, how I wish I could be with you! I have been afraid, for the last three or four days, that I should hear bad news from home, and now it has come. My darling, you know when you left me, I asked you to be happy, and told you you must on my account, and that I would for you. Something then entered my mind that all was not right, but little did I expect to hear so soon that you were sick.

O, that I might be away from this place, so that I could be with you! I think I could be such a comfort to you. You know, dear wife, I have been with you before when you have been sick, and of all things in this world, would that I might be with you now! They must all be kind to you now, and do everything in their power to help you. I know that they will; but then, dear, it is not like my being with you, I know.

I trust and pray to God that you will be yourself again, and

may it be God's pleasure to restore you to health in due time. It don't seem possible that you can be sick. I shall wait with much anxiety for tomorrow morning, to hear from you. O! I hope to hear good news from you, and then a great weight will be removed from my mind.

After receiving this, my dear Nellie, if you are not able to answer it, just get Fannie to write for you, as I want to hear from you very, very much indeed. God grant that I shall hear good news from my darling wife.

Sending you much love, and all my kisses, my sweet wife, I remain, your affectionate husband, FRANK.

WEDNESDAY EVENING, Jan. 9, '56.

My own dear Wife:

I received your kind little note this P. M., and am very glad to hear that you are so much better. I was afraid, by what father told me, that it was something more serious, and I was awaiting John's coming this morning with much anxiety.

My dear wife, I am really glad you are so much better, and by taking good care of yourself, I hope I shall hear in your next letter to me, that you have entirely recovered.

I am very sorry, my dear Nellie, that your visit to see me on Tuesday last was not more pleasant. I am sure there was only one circumstance that seemed not to please, and I supposed that was satisfactorily arranged before you left. You are aware I told you, if you went away unhappy, it would make it very unpleasant for me. My dear wife, I am waiting with just as much anxiety as you are in regard to the future, and hope all will be for the best. Now, I want you not to think too much of the past, or judge that I shall not be all that is honorable for the future. I trust that I wrote you in yesterday's letter about your folks talking to you. It is my wish that they will have as little to say that will tend to keep you excited as possible. I would rather there would nothing be said.

My darling, the time seems to be fast passing away now, and but few days remain between now and Monday, when I expect to be away from here. I shall go home, and shall expect you to come there at once.

Your letter to me this morning was all I could ask, but I want you to write more cheerfully. There must be better days in store for us.

My darling, I am fully convinced that you love me; and don't for a moment think otherwise.

I should judge from your letter that you misunderstood quite a number of things that we talked about, and when we meet, all shall be well explained.

My dear, when you receive this, I want you to write me all about your being sick. I was very much afraid that you might be worse today. O! how glad I am that you are so much better. I received quite a number of letters from you this morning, and I read them all with much pleasure; they were all quite satisfactory. About where you got the powders, you say you will tell me another time, which will answer just as well.

How very cold the weather must be out! Here 'tis about as much as they can do to keep this place warm. Our cell, as you are well aware, is so near the stove we are quite comfortable; if we were in our old quarters, we should be nearly frozen.

I shall write you a long letter for Sunday, and shall expect the same from you. Only think, it may be the last that I shall receive from you in this place! My dear wife, recollect it is my wish for you to look well to your health. I want to see you looking finely when I see you next; and of course, you must throw off all the care you can, and think your husband loves you yet. Look on the bright side hereafter.

You begin to have something to say about the little one. Why don't you like to talk about it when you come to see me, knowing as you do that I feel interested?

THURSDAY MORNING, Jan. 10, '56.
My own sweet wife: I did not quite finish my letter last night, and so I will finish now. I trust you are feeling bright and happy this morning. How gloriously the sun shines, seeming as it were to make all the world happy!

I trust that for the future, our lives will be such that we shall never have occasion to look back upon the past, and that all will be joy and peace.

I expected that the officers would have seen this when I commenced last night, but our man came along, and said he would pass it out, so it would go by the post-boy. If I had known it sooner, I might have written a different letter; however, you shall have a long one for Sunday, and you must not forget me. I must close, as I expect the man along every moment to take this.

Wishing you all happiness till I see you, I send you all my kisses, and an embrace that is much sweeter than all the world.

I remain, your affectionate husband, FRANK.

FRIDAY EVENING, Jan. 11, '56.

My own dear Wife:

I have not received a letter from you for some time. You are aware I mentioned to you that you must not expect me to write too often; in one of my letters, I gave you good reasons for saying so; but at the same time, I expected you would write me just as often as ever.

John was here this morning; "brought me nothing from you, and did not know whether you were better or not, and I am anxiously waiting to hear from you tomorrow.

Time is passing away; but today has seemed rather long to me, and I expect it will seem an age from now to Monday.—How many times, my dear, have I thought, for the last few weeks, of that day, for then all of me will know the worst! I have a feeling about me that tells me I must be free next Monday or Tuesday. But, my dear Nellie, it may be that all will not turn out for the best, and that I may have to come back to this place again. May God give me strength to bear all!

Today, we went to the bathing-rooms, and enjoyed the pleasure of smoking for a while, after which we remained in the main part of the building for a while. It almost made me sick at heart to see the prisoners passing to and from the bathing-rooms. What an amount of crime, (I could not help saying it to myself,) they have committed, and I confined here with them! I trust it will not be long, however.

The cell that we occupy now has contained a great many "noted persons," of which I might name, but "would not be very agreeable for you to hear about them. I will mention, however, that Tirrell was here last,—he is the *three card monte* man,—and before him, Tuckerman, the noted Eastern Railroad defaulter,—and a great many others of the same class.

I trust, dear Nellie, that you have improved very much since I heard from you last, and I trust I shall see you looking as well as ever the first of the week.

I received a very good letter from William yesterday. Yesterday morning, he says Willie went down to breakfast with them, the first time for three weeks, and that he is much better, of which I am very glad to hear.

Accompanied with his letter was received a basket of fine figs, and some fig paste, which were very acceptable. I answered his letter today.

I must bid you good night now, my darling, and finish this tomorrow morning.

SATURDAY, Jan. 12, 1856.

My sweet wife:

I did not commence to write you till late last night, in consequence of Edward's writing. How beautiful 'tis this morning, my dear, isn't it? How I long to be out! It seems as if I had been here for "seven ages," almost. And then, again, with you, my dear, 'tis too bad you should be so confined as you are. I hope you have enjoyed yourself this week, more than you have heretofore.

With this, I shall send you one I intended to have sent you last Tuesday; but hearing from you as I did that night, I concluded not to send it, but another, which you received the next day. As I wrote it on Tuesday last, just after you left me, you may probably like to read it.

I shall expect a long letter from you to-day, as I have not heard from you much since last Tuesday.

I supposed, from what father said, you was much worse, and that you really were in a condition which gave me much anxiety for a day or two. I trust you will be very careful of yourself, as you know just now the condition you are in.

My dear, I expect to see you on Monday, and I want you to be feeling well, and at the same time, I expect to see you looking finely. This may be the last letter you will receive from me from this place; I trust so, at least.

In some of my letters that I have sent you, if in them I have said anything that is wrong, I hope you will overlook all, as I have not intended to write anything but what I thought would do you good to hear; and as we are situated just now, all advice that will promote our happiness in the future, I have been very willing to hear, and I hope it will have great influence with us.

My dear wife, you have not written me for some time now what you have been doing. You know, at first, you used to inform me, saying that I probably would like to hear; and I assure you, my dear wife, that interest has not ceased with me yet. But I can imagine you have kept yourself well employed.

I expect Mr. Morse here some time to-day, and I shall give this to him, so there will be no doubt but what you will get this by to-night, as you will probably be much disappointed if you do not hear from me—I shall, if I do not hear from you.

Give my love to all friends.

Hoping to see you very soon, my dear, I send you a thousand kisses, and much love.

From your affectionate husband,

FRANK.

[Here the Court took the usual recess of fifteen minutes, after which his Honor announced that an afternoon session would be held to-day.]

Mr. CHASE resumed. We have arrived in the course of the argument, gentlemen, to the evening of the 25th of February. The case of the libellant, if it can be maintained at all, is to be maintained on this, that although down to that night the respondent had continued constant in her asseveration of innocence of the

great crime, and her husband has implicitly believed it, on that night, not having succeeded in forcing an interview with him at the house of Coburn, she confesses to him that she had been guilty of adultery. Unless this part of the case is established by credible and undoubted testimony to your reasonable conviction, it is certain there is no case for the libellant. We are brought at once, then, to the examination of that important part of the case. And perhaps I cannot better begin what I have to say in relation to it than by asking you whether it is at all conceivable, as a matter of probability, that this respondent on that night all at once falls into a confession of guilt. Down to that hour, remember, her story had been uniform, and repeated, and constant; down to that hour, on her oath, in the pangs of premature childbirth, with tears and attestations to God Almighty, she had declared herself innocent; down to that time her husband had a hundred times said he had believed her to be so. And the allegation on the part of the libellant is, that then and there, under the influence of some incomprehensible motive or another, she suddenly and instantly changes her tone and admits her guilt. I think, gentlemen, that the first thought which would present itself to your mind, with which you should most naturally begin this inquiry, is, whether or not it is at all conceivable, as a matter of probability, on any view of the case, that she could then and there go and confess it. Those of you who believe with me on this survey of the evidence, and on the judgment of the libellant himself, that she was wholly innocent of guilt, will of course reject it as entirely incredible and impossible. But I respectfully submit to those of you who may feel any degree of doubt in regard to the matter, who might still think it in any degree an open question whether she was or was not possibly guilty, although there is no proof of it—I ask you whether you believe it to be possible that then and there she makes the confession? May I ask you, gentlemen, with very great earnestness and confidence, if you can discover a conceivable motive for it? I can very well understand, assuming for a moment the hypothesis of guilt, that although she had down to that hour continued steady and constant in her asseveration of innocence, upon a death bed, in a moment of anticipated final separation from her husband, wishing to make a clean and clean breast and reveal everything—if she had down to that time kept so perilous a secret as this in her bosom, that she would have declared it. But how stands the admitted fact; for what purpose is it on the confession of everybody in this case, that she seeks this interview with her husband? Everybody tells you, John H. Coburn tells you, that in that interview she proposes to fly with him to California, where they can live away and alone. Every particle of evidence in this case, entitled or not entitled to confidence, makes it perfectly clear to a demonstration, that she solicited that interview because, tortured by his extraordinary absenting himself from her since he left jail, she was anxious to make one more effort to win him back. From the hour he left the prison, down to the night of the 25th of February, she had expected to see him; down to the time she had been kept from him by influences incomprehensible to herself; down to that time she felt scandal and slander were keeping them apart; that his ear had been abused, and that he only wanted one more assurance from her lips, that she had told all the truth, and he would come back to her. For that purpose, the result of all the evidence in this case proves it, as she seeks him, and then and there,—I respectfully submit to you in advance,—that it is a stupendous moral improbability, which nothing can sustain, that on any possible theory of this case, she should meet him and fall into a confession of adultery. For what conceivable purpose, I ask you again, on any theory of the case, should she do it? She was dying to live with him; her heart craved him; she must live there or bear no life, and the whole object of the interview, obtained partially, they say, by stratagem,—and I dare say it is so, for they did not

intend to meet,—was to remove any lingering doubt or uncertainty, on his mind in regard to her supposed guilt. The very object of it was to overcome any obstacle that scandal and slander had placed between their reunion, and therefore I submit it is provable by no amount of evidence, that meeting him for that purpose, she falls instantly into a confession of guilt. Whether she was guilty or innocent, I submit to you; we know, as men of common intelligence, that she would have continued, then and there, steadfast in her assertion of innocence; was she so great a fool as to think for a moment, that if after so many and such solemn assertions of her innocence, she could not win her husband back, a little confession of adultery would do it. If he would not live with her an innocent woman, would he live with her a guilty woman? If he would not live with her, believing her heart to be his, and her body to be his, would he live with her, after he learned that she had surrendered both to his pollution? I put it to you, in advance, gentlemen, that if an angel from heaven, a being assuming to come in the guise of an angel, should appear before you with such a story as this, it would bring his origin, mission and character into great question with you. Was she afraid at that time of any new revelation? Certainly, none at all. The forged letters, if she had heard of them, she declared to be forgeries, and her husband believed it; Sumner was in his grave; the last voice that accused her was hushed in death; and therefore, if down to that hour, fearless of exposure, fearless of detection anywhere, or from any quarter, she had continued steadfast in this assertion of innocence, I submit that every motive that could weigh with the human mind, would have kept her constant in it to the end; and if down to that time, while Sumner was still living, and these letters, if they were not forged, might have been invoked against her and proved to be genuine, she had never faltered in that assertion, and if every motive of fear had gone, and every motive for persistence in her original statement had remained in all its force, I repeat, even upon the testimony of John H. Coburn and Edward O. Coburn, and from all the facts and circumstances in this case, she seeks that interview for the single purpose of disabusing the ear of her husband of this scandal and slander, by which he was kept so mysteriously away from her, and therefore it is not possible, under the ordinary and known laws of human nature, that she should not have persisted in her innocence still. Those of you who believe with me, all the evidence in this case, as judged by Dalton himself, will declare her innocent; those of you who are in any degree of doubt upon that subject, will also say she is innocent. I have therefore to call your attention directly to the nature of the evidence by which they attempt to overcome our claim of the improbability of this confession.

And this makes it necessary and proper that I should say a word in advance in regard to the nature and danger of this kind of evidence on which they are now relying. It is the evidence of confession, and confessions on the reported words of the speaker. It is very common to say, and it has passed into a maxim of the law, and it is one, I dare say, upon which his honor will give you the results of his own experience in his instructions to the jury, that it is a kind of evidence in all circumstances extremely dangerous, and to be most critically and carefully considered by the jury. The evidence of confession may sometimes be the highest and most satisfactory in a judicial investigation, and, on the other hand, it may be, according to the circumstances of the case, the most worthless by which human rights are ever brought in peril in a court of law.

Gentlemen, if we can feel undoubted confidence that the exact words of the speaker are brought before us as they were uttered; if we can feel undoubted confidence that we have them all in their proper order and according to their sense and meaning as they were spoken; if we can feel undoubted confidence that nothing has been omitted, nothing has been colored, the right collocation has been pursued from first to last, and that the true substantial sense and effect as it was in-

tended when they were uttered has been given, we may then, with great confidence and certainty, proceed to the most solemn of adjudications; but if, on the other hand there is reason to fear that the words themselves may have been imperfectly heard, if they come reported to us by untrustworthy and unreliable witnesses, if they are testified to by persons under strong temptation to color, to exaggerate, to forget, to drop the appropriate qualifications, to change the order of them as they are spoken; if they come before us under such circumstances as these, gentlemen, there is no weaker or more worthless or more pernicious description of proof on which an intelligent jury are called upon to investigate a case.

I think we need not go further than such a case as this to indicate the danger of such a species of evidence. Had you not had it proved, by the most undoubted testimony in the case, that Mr. Dalton, with apparent sincerity declared in the country, that Mrs. Dalton had confessed to him that she committed the crime of adultery in Fera's Saloon; you remember the testimony of William Richardson to this point; and to those of you who know him and his character, and to all of you who have seen and heard him on the stand, I am sure there cannot be a particle of doubt that Dalton made that declaration with apparent sincerity. That he did so is the evidence of Mr. Richardson, under circumstances that give it entire credit in the minds of the jury; that he did so I submit, made it perfectly clear, by the fact that the allegation in the libel, charges in terms adultery in Fera's Saloon. Dalton then made that declaration—and as I believe that Dalton, with all his faults, all his mistakes) and as much as I pity him, I have to the same extent to censure him,) is still an honest, intelligent man—you have it before you that he himself, an honest man than either of these Colurns, a thousand times told, verily believed and seriously declared that his wife had confessed to his face adultery in Fera's saloon. That you have heard from him. Did she ever make such a confession as this to Dalton? Did she ever say a word to him, which as he understood it, at a time when his mind was fairly and freely under the influence of no sinister motive or biases, or cause of disturbance,—ever made such a declaration as this to him in her life? Gentlemen, let his own conduct answer that question. I had occasion to avert to it yesterday, but it is necessary again to call your attention to it. Dalton himself declared that the confession was made to him about the time of the flogging affair of the 17th of November.—That it was made then if it was ever made, there is no matter of controversy or doubt in this case. If any fact is established it is this one; that from the 14th of January until the evening of the 25th of February, he never met her at all. This confession of his wife, therefore, thus distinctly and deliberately affirmed by him, to have been made to him, was made on or before or about the 17th of Nov., and within three or four days following that tragedy. Did Dalton at that time understand that to be a confession of guilt in Fera's saloon? Didn't he live with her for the three weeks following, as a loving and trusting husband? Didn't he write her letters which have been so much the subject of commentary before you? Is it not, therefore, perfectly clear, as he heard them first when his ear was unabused, and his mind capable of judging, and his memory capable of accurately reporting, that he understood her perfectly? What did he understand her to say then? Just what she has said everywhere; just what she has said a hundred times over in her letters, more forcibly and more strongly everywhere against herself than there,—that she had sinned with Sumner; that she had had improper intercourse and intimacy with him, and that she had met in the course of that intimacy at Fera's saloon. That was exactly the confession as she made it; that was exactly the manner in which he understood it then, proved by his subsequent, unequivocal acts; and yet afterwards, when he came abroad, and began to look back upon it from some time subsequent, when he

began to conjecture that public opinion, began to proscribe this and proscribe that, when his real or false friends had come to whisper another story in his ear; even then it was, for the first time, that, attempting to recall the conversation and to find in it somewhat to justify him for the course public opinion, not his own convictions, was compelling him to adopt, exceedingly doubtful, perplexed in the extreme, and endeavoring to recall those words, he recalls them as a confession of actual guilt.

I submit that you have there an illustration and a warning that should put you upon your guard from first to last, and if you find such a mind as Dalton's incapable of recalling a confession, made to him deliberately and distinctly, and on which he acted for two months, incapable to remember, incapable to repeat—judge you whether or not great caution is not needed in weighing this kind of evidence, when you appreciate the source from which it comes before us. Always, therefore, gentlemen—and I pray his Honor's attention and approbation to the remark—this species of evidence is to be weighed with the utmost degree of care and caution; and I suppose, sir, that I speak the universal language of the books, and the universal experience of every lawyer, when I say to you that in the nature of the case, no well founded reason to apprehend that the words spoken were equivocal in their nature, that they were meant by the person speaking them in one sense, and yet so uttered that there is danger that they should be taken in another, and then they come before you on the report of witnesses untrustworthy, testifying under strong apparent bias and motive to color and exaggerate, and omit and put them out of their order, it is the weakest and least reliable testimony ever given in a Court.

That is true, gentlemen, of this kind of evidence, under all circumstances; but may I not now remind you, a little more formally and earnestly, how these confessions all come in.

May I not remind you that every one of them is made by a party, believing and admitting herself to be guilty of something, by a party who, under that consciousness of having been guilty to some extent, through sighs and bursting tears, makes confession of that guilt, intending to make no confession of guilt beyond that. Is there not extreme danger that the extent and nature of the confession, which is insisted upon, will be exaggerated and colored when it comes to be reported to you by parties with a disposition and temper to report unfavorably. Helen Dalton did not stand in a position in which she could deny all impropriety and all guilt; on the contrary, her case is,—and it has this affecting and this important peculiarity,—that she had much wrong to confess, that she had much guilt to own, that she had many temptations to acknowledge, that she had much sin to pray God and her husband to forgive; therefore, when she is making confessions to this extent is there not danger the most extreme, unless we can place the most undoubted reliance on the kind of testimony and the character of witnesses by whom it comes to be reported to us, that it will come exaggerated, and this conceived and over-rated, perilously and fatally, at the cost of truth.

In regard to her letters, written by her own hand, I have no doubt, by and by, my friend will take up some part of this long series of correspondence and insist that there, under her own hand, she has made confessions of guilt. I am hardly prepared to expect it from his candor and fairness, but I am hardly prepared to entertain the least degree of fear that such argument will mislead any body. You had read to you yesterday, gentlemen, as a close of a series, one of the last letters she ever wrote him, before the letter she wrote to him in reply to the filing of the libel, and I apprehend from what my brother says, in this trial, that he intends to call your attention to certain expressions of that letter as going to the evidence of guilt. Gentlemen, the expressions of penitence, sorrow and sin, the allusions to the temptations and the tempter, in that letter are not

as strong by a thousand fold as all her correspondence before, from the beginning of the series down to that hour. There has never been a letter from the 12th of December, to the 26th of February, in which there is not an expression stronger and more unequivocal than is contained in this. She has admitted her sin and wickedness, over and over again to her husband, and yet been perfectly understood by him at every stage and in every paragraph, to mean by that a confession only of this guilty intimacy, and an assertion of her innocence of the great crime. Every where in her correspondence you will find her use of speech, when you come to read it, will be perfectly appreciated by you. I believe the first letter I read this morning contains expressions quite as strong as any contained here.—All of them are full of it; in all of them she prays God for forgiveness; in all of them she admits herself to have been sinful, to have done wrong; and yet so perfectly well was that understood between her and him to be nothing more than the abhorrence with which a pure and surprised mind, that had been led into an intimacy inconsistent with her conjugal duties, but which had fallen short of the last breach of the conjugal vow,—so perfectly was it understood between them that, after all those letters had been written, Dalton's answers, one after another and another, down to the very last, continued to vow and repeat his expressions of confidence in her. I shall submit to you, and call your attention to it, that that language of the tempter and of the temptation to which she does not for a moment admit that she yielded herself, beyond what had been the uniform recognition of all their correspondence, is by no manner of means a confession to the same extent and in the same strength as a hundred other expressions with which her letters abound. Therefore, you see even in the interpretation of writing, where the party is making a confession to some extent, there is great danger that we shall interpret those confessions beyond the meaning, and therefore I have to call your attention to that great rule by which not all circumstantial evidence, but in a very extraordinary degree an evidence of confession, is to be judged,—that great rule which applies and governs this part of the case, which is that if the language employed, whether spoken or written, is fairly and reasonably susceptible, it is the duty of the jury to take it in the milder. It is not at all a matter of feeling, it is not a matter of the heart, it is not a matter of charity, it is not a matter of inclination, but it is a clear rule of the law, that where the language is equivocal, and where circumstances (and her own folly among the rest) have placed the party in a condition in which she must speak in equivocal expression, you are bound everywhere to adopt the milder interpretation; and yet you see that when testimony like that, not resting upon letters, comes to be reported to you by witnesses under strong bias and feeling, to color, exaggerate and overstate, it is all but impossible that it should come before you in form false and distorted.

The first general remark, then, which I have to make to you on this evidence is, that before the law advises a jury to pay the slightest regard to reported verbal confessions, they ought to have the clearest conviction that the witnesses who come here to report it are perfectly cool, unbiased, impartial, fair, just, and under the influence of no motive and no temptation which should induce them to color, exaggerate or distort it. The law makes it, I submit, and I pray the observation of the Court upon this, almost an indispensable prerequisite that they should come before you through a source perfectly trustworthy, through witnesses whose character is undoubted and justly unsuspected by the jury, so that they should feel satisfied that they cannot by any possibility have lost or gained by their representation before you. And, I submit, that we come to a the evidence of confessions in this case, evidence of fact so improbable in itself, by this great uncertainty standing out on the face of it, that there is not a scintilla of testimony of confession against Helen Dalton, but

of the confession of that indiscretion and loss of self-respect about which there is no controversy in the case, except from witnesses who are not apparently entitled to the least degree of regard from the jury.

John H. Coburn, who admits here in this case that he attempted to obtain money by written false pretences of Mr. Gove, a States Prison offence that ought to destroy his testimony in a moment,—Edward O. Coburn, who has to admit in the outset of the cause that he is a robber to the amount of seventeen hundred dollars of his father's money, and Mary Hunter, that brawny stranger of whom we know that she is a wet nurse and a mother without a husband,—these are the witnesses who come before you. I say nothing of conspiracies, or of families, but I do have the honor to say to you for the rights of my client, in regard to evidence so delicate, requiring to be weighed and handled with such accuracy and care, that it is a body of proof which should put it out of the consideration of the jury in a moment. These witnesses to confession cannot so much as bring a written letter of my client to this case without mutilating it as a forger; they cannot carry a letter to her husband without taking a pen and striking out eleven lines of it, and thus charge the whole statement into a lie which she has never uttered. Does not that foot stand outside of this case? Was not his Honor, a week or a fortnight ago, obliged by the undoubted rules of law, to reject a letter offered in evidence by the counsel on the other side, because it appeared on the evidence addressed to the Court, that one of the leading witnesses had by mutilation turned the whole letter into a falsehood, and poisoned her own proofs at the very source. Are they witnesses to be trusted with the report of evidence by words? Are they witnesses to remember words where everything may depend upon the exact expression, upon the order of the language, upon dropping an epithet here and inserting an epithet there, by which the guilt of adultery is confessed? This a body of witnesses that are to be trusted to report words, that are the issues of life, with certainty and accuracy? I submit that on the outside of it, the whole case of confession to be listened to by jury, is a conclusive and rational distrust which would leave my client in no fear at all of the result. Here is a man that cannot be trusted to carry ten bushels of yellow flat cord across the city for fear that he would steal half of it,—(laughter);—who cannot be trusted to take a hat full of uncounted bills to New York. A man who has not honesty enough, or fairness enough, to weigh the hind quarter of an ox, (laughter); shall he be trusted to weigh out gold dust and dimes, and count the pulses of life? A man not honest enough, a combination not honest enough to carry a letter without mutilating it into a falsehood, to prove words in which honesty, intelligence and fairness may be entirely omitted!

We come then to this examination of confession exactly in this state of the case: It is a probability, amounting almost to a miracle, that a confession should be made under any circumstances at all. Confessions themselves are never to be acted upon by the jury unless they know upon their oaths, that they have the very words spoken in the sense in which they came. They never can have that assurance if they have not a clear and undoubting confidence in the speaker that reports them. And their case opens, I say, with this: that a moral motive is to be established on the testimony of confessions, by the evidence of witnesses, as a body, manifestly and apparently, underscoring a moment's confidence.

But, gentlemen, we must go now into this miserable detail a little more fully. My client has been in great danger of being ruined by the evidence of witnesses, every one of whom I submit is worse than the other, and every one of whom is less trustworthy than the other. (Laughter, and demand of silence by the officers of the Court.) And it becomes, therefore my painful duty to ask your attention for a few moments on the evidence to some of these grounds on which the law de-

clares it to be your duty to lay the evidence aside. I hope you know me too well, by this time, gentlemen, at any rate, if not it is too late to make professions about it, to think that I have any pleasure in railing against witnesses; that I expect to gain anything in the least degree by mere sarcasm against witnesses; that I do not recognize in the fullest manner the general presumption of the law that a witness means to speak the truth; that I am not, therefore, bound to show you on this proof, that according to the established and recognized tests by which the credibility of evidence is to be weighed and appreciated, these witnesses are not entitled to confidence.

If I don't go to that extent, do not hear me; if I do not go to that extent I give my eloquent friend leave to reply that I have brought a mere railing accusation. If I shall show you, according to those standards which the law has provided to discriminate between truth and falsehood, between trustworthiness and untrustworthiness, that these witnesses are not entitled to the full and undoubting confidence of the jury, I then demand of you, on your oaths, gentlemen, that you disbelieve every one of them.

I may be permitted, in this same connection, to repeat a remark I made yesterday, which is, that somebody or another in this case has perjured himself.—It is not a vague, a general charge of perjury, to be made out by me against the other side; it is a call on the jury to choose and say, according to recognized tests of credibility, by which the credit of witnesses is to be weighed in a court of law, which of the witnesses they will believe and which they will not believe.

I begin, therefore, with the foundation witness in this case, John H. Coburn, and I respectfully submit to you, that, tried by every test of credibility which the law recognizes, on your oaths you are bound to disbelieve him. It is not that a laugh can be raised against Coburn or his testimony; that is nothing; it is, that according to those tests which are founded on the longest and widest experience the law deems satisfactory to show whether a jury can safely believe or not, he is not to be believed. I submit, then, that John H. Coburn is not an honest man, and is not, therefore, entitled to be heard in so delicate a work as bringing every word my client spoke on that evening to her husband; he is not an honest man, and I put it on your solemn oath to you, that there is not a man on that jury, who on the exhibition of J. H. Coburn, would entrust him to carry a bundle worth five dollars from this Court House to the depot. There is not a man of you who would take him into your service for any wages or for no wages; there is not a man of you who would have his own life, his own character, his own good name, still less the life of his child or the good name of his child, to rest on the tongue of that witness for a moment. How does he come into this transaction at all? I will tell you exactly. He found out very well that Mr. Gove was extremely exercised on the subject of this attack upon his daughter; he found that this father, alarmed and apprehensive, receiving anonymous letters, his nights made sleepless, his fears becoming his master, was looking for and fearing evidence in every direction; and says Coburn to himself, "I will have something of this; I will make something out of that, or my name's not John H. Coburn, nor John S. Perkins, nor John S. 'Serkins.'" Here he found the tender sensibilities of the human heart tortured. I will not call, as my learned friend did the other day, Mr. Gove on "old fool," but he was an old parent termented by his heart's love, ready in a moment to believe everything, ready to run to the fortune teller, ready to take counsel with dreams when his anodyne would give him a dream to consult; and says he, "I will have a jacket and trowsers out of this business; I see pantaloons there, (loud laughter, with a call to 'silence,') I will have a game of billiards and a suit of clothes, or I am nobody" (laughter). That is the way he comes into the case. He comes and tells Mr. Gove the most treacherous, beastly falsehood by which an exercised, and tender, and apprehensive heart and imagination can be so-

lied and imposed upon. Says he, "I was in the court house the other day, very much absorbed in the trial of the cause, and somebody whispered in my ear that one John Simpson saw these people commit adultery out in Brighton." "Now," says he, "I don't think John Simpson will stick to that; I don't know that it is true, but if you will furnish me money enough I will go and find John Simpson, and he can be brought to see whether it is true or not." Every word of that was as black a lie as if it had been uttered by four pirates; he never had heard a word in the court house about John Simpson; there was no such man as John Simpson; the whole is a pure and sheer coinage of his own bad heart to practice upon this father and furnish himself with the miserable means of a night or two's dissipation in Providence, and a suit of clothes that he had not credit for at a second hand shop. (Laughter.) It is a sheer fabrication, there is no such man as John Simpson on the face of the earth; if there is, now is his time, now is his last time; I call for John Simpson, (laughter,) out of this court or out of this community to show his head; aye, or any human being that ever heard of him in his life. It would not be extraordinary if, looking over the directories of ten thousand cities, states and kingdoms, you might find such a man; but that John Coburn ever heard of such a name, that the name of such a man was ever reported to him in his life, that he believed for an instant he had any such testimony to give, that it was anything but downright scandal and falsehood for which if I was not in a court-house and was not responsible to the law, I should say a horsewhip was the remedy and not the State prison, is preposterous. No such man ever existed. Why do I say this? Does not Coburn come here and say somebody told him about Simpson? Yes, but who told him? Do we rely on what Coburn heard? Here he is; a little money and he who agreed to go down and make that report through the telegraph will swear to it just as solemnly as he has done it on the stand. Do you believe him on the stand on his oath, or because you believe the principle of veracity is there? I hope the solemnity of an oath will never be dispensed with; I believe it is not likely to be; but I am bound to regard it as a foolish and idle ceremony if it is taken by a heart and head that does not recognize out of doors the principle of truth. I say once more, that you have no more evidence of the existence of John Simpson than you have that Coburn met him at Providence and was about putting him over the wires when he wanted him for evidence (laughter). He lied then for money; he may now lie for malignity and consistency. There is not therefore a tittle of evidence, and I call on you who are charged with the administration of justice in this case, who should know by this time that our rights are only as our proofs, and that you don't own your house any more than I own it but upon evidence, that you have no right to your life or good name, no right to entertain a belief in the good name of your wife or child in law, but according to the proofs by which the law is administered—I call upon you here and now to say, this man is a rogue, a liar, a forger of false telegraphic communications. A party comes into this case for the purpose of making money by falsehood; therefore he is to be laid entirely out of the consideration of the jury. Do you suppose that anybody whispered to him in the Court House about John Simpson? Next to John Simpson, I should like to see the man who made the whispered communication in the Court House. He hadn't the curiosity to look over his shoulder, so absorbed was he in the proceedings; somebody whispered in his ear, "Simpson saw all this at Brighton," and he never looked over his shoulder to see who it was. I would like to know if he thought he was a man with a "venerable grey beard," whether he was all right about the feet (laughter). He should be suspicious of that, I should think—whether there was nothing cloven anywhere (laughter)—and to be quite sure whether it was not the suggestion of the devil himself or his own bad heart. Never looked over his

shoulder to see the man! If the person who gave that information is within the sound of my voice today, let me tell him now is his time, and that he would bring a hundred times more than he was probably ever worth in his life if he would show his head. There never was such a communication; the whole was simply false, and you have no doubt of it as stands before you.

Gentlemen, you have as little pleasure as I have—and I have little pleasure in remarking upon any human being, who, upon the responsibility of his oath, has given his testimony. But we are here to defend a great right in a court of law, and upon the proofs it would be a mistake of duty if we did not follow this matter up, and hunt up to the whole extent the character of this witness. I say you do not know whether he tells the truth because he lied down there; and didn't he lie here, and didn't he come up to the Tremont and the Parker House and book himself with a false name—for a charge which remained unliquidated, for all he knows—and then send down a communication in the name of John Simpson, to bring this poor, credulous, terrified heart to a hotel to be cheated. Is there a man who doubts that he had some second-rate whom it was intended to pass off to Mr. Gove as this Simpson who was willing to declare to the falsity of the charge? Didn't he twice by writing declare that Simpson was there, and wasn't it a palpable and repeated lie? And this man to save his head and conscience and sacrifice his heart. He is so malignant a creature that if the mere joke of this exquisite falsehood should bring this father up there, merely to give him the trouble of walking to the hotel and an additional walk up stairs—no, I give John H. Coburn credit for not quite so much malignity as this; and I have reason to suppose that it was not for a little money to play billiards with and a suit of new clothes, he would hardly go so far as that. Practice a joke under those circumstances! Is this the character of Coburn? Why, he admitted all this falsehood on the stand in such a winning, ingenuous, and loving way—that he was a great rogue and liar and had been everywhere that we were almost attracted to him. It is, therefore, fit and proper we should know that this winning confession of Coburn on the stand was not quite so voluntary after all, but if it becomes necessary to bring another incident into the trial he is ready to furnish it.

This Coburn, about six days ago, was attacked by a very bad erysipelas in his angle. I do not wonder at that; after his five hours examination on that stand I think he might get it. But he was attacked with a very bad erysipelas in his foot or angle. In my humble judgment it was an erysipelas of apprehension about coming into the Court House and testify under the eye of the Court and jury. But he was attacked, and accordingly we sent a couple of eminent physicians, Drs. Dana and Durant, up to see what they could do for him, and they put him through a course of warm water or composition powder, (laughter,) or one thing or another, until they cured the erysipelas beyond all doubt, gentlemen. (Laughter.) They killed the witness and they cured the patient. (Loud laughter, and call to silence by the sheriff, who said that gentlemen who desired to remain in the Court House must preserve silence.) So the man came upon the stand and admitted he sent this communication by telegraph, and the message from the Parker and Tremont. He swore forty times very deliberately that he never wrote one of them—deliberately and repeatedly over and over again, and it was not till my friend, the Doctor here, had turned that screw about a hundred times, with from forty to fifty interrogations, that he was beaten out of one covert into another, from another into another, until at last he was obliged to confess, although he began with most peremptorily denying it altogether, that he sent the telegraph and wrote the forged communication from the Tremont and Parker house.

That deposition has been read to you gentlemen, and perhaps it may be within your recollection, and I

will not take a great deal of time to verify what I have said. I do maintain—and I call upon my brother who was present and who can tell whether what I say is exactly true or not—I call your attention to the fact, that instead of then and there admitting he recollected it in the prompt manner he did on the stand, he meant to lie it through and deny it, and he did deny again and again in the most deliberate, positive and peremptory terms that he sent the telegraph or sent the message. And his honor will instruct you—and I ask the Court for that instruction—that if you found him then and there intentionally uttering a wilful and deliberate falsehood you will not look at his testimony, you will not weigh it, you will not remember that he has testified in the case. You will throw him out of view and put the merits of the case upon testimony that is credible.

I have before me, however, by the kindness of my brother Durant, a brief specimen of the manner in which he swore to these two inquiries, and as they are so entirely decisive of his title to truth and his purpose to swear to a deliberate falsehood, I feel bound, as I will detain you but a moment, to lay them before you. After having proceeded to the 88th interrogatory—I think there were about six or seven hundred applied in all, although there was very little to apply them to after he got to the last three or four hundred—in answer to the 88th about these telegraphic communications, which were shown before his face, he was asked if whether he sent these messages from Providence. His answer is that they are not the messages; "one is and one is not the message I sent or caused to be sent from Providence." The three communications are here upon the table; I do not know but I had better pass for a moment and turn your attention to them. These are all upon what I shall have occasion to say a word.

The first is to John Gove. "Don't fail to send me some money." You know he had a very unlucky night. But no money came. The next is sent to Mrs. Frances Coburn. "Some money lost; send more to-day by express to the City Hotel; go to New York to-night; wrote to S." Yes, there is a letter to Simpson; he swears that Simpson is the party meant by it.

Still no money comes; and then he tried this final, and, as he supposed, master strategem; he telegraphed to Mr. Gove, "March 25th—J. S. is with me. He was for Boston. I've got him; send more money tonight to me at the City Hotel." There were three telegraphic communications, you see. My learned brother asked if he sent them from Providence, and he swore they were not messages that he sent; says he, "one is, and one is not;" he could not swear to either. In answer to the 92d question, he says he doesn't recollect of putting J. S. into any message; to the 98th, "I know I never sent such a message;" to the 99th, "no one ever wrote that message at my request." All this was said upon his solemn oath. But after having been attended to by my learned brother—the erysipelas indulged in for a day or two—when we come down to the 290th cross-interrogatory, he admits that he wrote every one of them.

He says, "I knew the messages were false; I did it to get the money quicker." I do not thank him for the admission, as he made it on the stand; but I held him up to this, that then and there, with the telegraphic messages brought to his mind, he expressly swore, "I never authorized any message to go with J. S. in it." Are we to be told that this man, having sent these messages, had forgotten it? Is he a man who travels about the country, sending false messages so frequently, to get money that it has become habitual with him, so that he cannot remember whether he does it or not? Is he to escape by any such folly and wickedness as this? I submit that you cannot place a particle of reliance upon his statement; that he remembered from the beginning perfectly well sending the messages, and the reason for which he sent them; that they were every way intended to extort money, and if the money had come, he had done a crime which would have consigned him to the State Prison

for a statute crime, and he intentionally, on his oath denied it. If he has not memory enough to remember whether or not, before or whensoever this was that he sent such a message from Providence, if he has not memory enough to recollect whether he took part in such a transaction as that, so singular and so scandalous in its character,—would you trust him for a moment to report those words of the poor penitent wife, confessing much, but through her tears denying the least guilt? If he cannot recollect this, would you trust him for words, hard to be reported, difficult to remember, very easy to be misunderstood or misrepresented. But I take it that if a man goes down to Providence, and tries to cheat his neighbor out of money by false pretence, that is a matter of fact which he will remember as long as his moral nature shall endure. Is this all that that man testified to on that occasion? I confess that I was never more astonished in my life, not having examined this evidence very closely, than to find, when my attention was called to it by my brother Durant, that, under the solemnity of an oath, he denies that he ever entered the name of J. S. Perkins or Serkins at the Parker House. At about the 131st inquiry he says, "I did not enter the name"; in reply to the 141st he says, "I will swear I did not write in the register at the Parker House"; to the 191st, "I entered no name at the Parker House"; to the 192d, "I entered no name, neither a right nor a wrong name"; to the 193d, after he was shown the register, "there is no entry there of my name." My learned brother then held up the word "John S. Perkins," which so troubled him.

He should not have been so astonished; if he had supposed it to be "Perkins," he should have remembered it sooner. Says he, "there is no name there in my handwriting at all." My brother then puts this question.

Coburn was obliged to confess that my brother Durant conducted that tremendous cross-examination with great kindness, allowing him every adjournment for which he stipulated, and when he was tired of the attendance of the legal physicians, they gave him over to the delicate attention of the nurses, who tenderly took him in charge. At last, when my brother Durant asked him—he having taken advice of counsel, having refreshed his memory, having recollected that he had a conscience—"will you willingly and deliberately swear that that entry, J. S. Perkins, or Serkins, was not made by you, or any part of it?" he made the dreadful answer, "I deliberately and willingly swear that I did not write it nor any part of it."

Can I, Gentlemen of the Jury, possibly pursue the detail of such an examination as that? I ask you, as you value your rights, that you instantly, if you take the rule which the Court will unquestionably prescribe to you, if the witness has intentionally falsified in any one thing, he is to be taken to be false in all things—He may be innocently mistaken in one case, and yet you may give him credit in another part of the case, but the moment that you find him deliberately falsifying, his opinion is of no consequence, it has no meaning, and he is regularly laid out, and there is an end of him, and the case is thenceforward to go on without him.—The only escape for this man is for him to say that he goes to Providence and telegraphs these falsehoods, comes back to Boston and hires two rooms at different hotels, under false names, causes false letters to be sent under false names, enters his own name falsely, and that transaction had entirely faded from his memory, and therefore he could not recollect it. I say it would be to trifle with the oaths of the jurors, with the administration of the law, the rights of the parties, to give the least degree of credit to such an explanation as that. I submit to you, therefore, there is an end to the witness John H. Coburn, and there is no testimony to that hideous confession which he comes here to report, none whatever. It is not sworn to, there was no confession to the judgement of the jury under the subtle rules of law. Do you not all see that in the course of this argument, I have carefully avoided all mere professional railery at the witness? I am bring-

ing him up to the golden tests and standards by which the law weighs—proof, or the assayer weighs gold. I am helping you to see him by the light of the rule of law, and I cannot allow you for a moment to suppose that I am indulging in a professional habit of abusing witnesses when I am simply declaring to you with all truth and soberness, under my responsibility to my profession and my oath of office, and with the sanction of this Bench, the great rule of law by which the credibility of evidence is to be passed on, and I declare the law to be, if you find a witness to have sworn deliberately to a falsehood, knowing and believing it to be a falsehood, that he is no longer a witness, and on this ground I submit that the testimony of John H. Coburn is not to engage your attention for a moment. There is a great deal of commentary that might be made on this, a great deal tending to show the utter incredibility of the witness to the jury with which I will not detain you. He is laid out, and is to be viewed as a discarded, false, and purged witness.

There are two or three other occasions of false swearing, of which I ought to say a word. One I shall find exceedingly difficult to bring before the jury with that delicacy which I should like to exercise, but which I shall not shirk from presenting because I think that duty honorably and fairly done, is itself not undignified, and that it requires to be done, however unpleasant. One thing which I wish to show you is, that this man, John H. Coburn, who comes here to swear falsely—contrary to all that we know concerning the law of a healthy memory—remembers more the further he gets from the transaction.

It was not exactly so, to be sure, at Providence and at the Parker and Tremont houses, but it is quite true with regard to that extraordinary confession—wherever the normal rule of memory is rather to lose than gain as the time of the occurrence recedes, so much so that some theorists maintain the opinion, though I do not agree with them, that we should at last recede so far from the recorded revelations of God that they cannot be believed. It is according to a healthy law of memory that it loses its record as it recedes from the fact, but this man's memory grows the further he gets from the transaction, and if it shall happen—as earnestly I trust and beseech it may not happen—that there should be a disagreement in this jury, and a review of this evidence, I apprehend that we shall have three or four more pages of testimony from John H. Coburn, for you will see that this man, like most who fabricate their story, states that he sat down to make a memorandum of what he then and there saw and heard. I have no doubt that he made such a memorandum. About the time the erysipelas came on, and a pretty mess of dirty balderdash it is, but when he comes to testify, it is the most remarkable thing in the world. As you will find by comparing his evidence in the deposition with the memorandum, that there are at least two and a half pages of most material detail in the deposition—and to which he swears in so many words on the stand—of which there is not a single syllable in the memorandum, which he pretends he wrote a day or two after the occurrence, and in which he swears that he wrote down every word that he deemed material. Under the influence of the erysipelas, his memory acts with such morbid and additional vigor, that he recollects two and a half pages more than he did at the time when he wrote down his memorandum. When he comes to testify there is no memory in the memorandum, and I submit that the whole memorandum was written within a fortnight from the day that he was called to testify, and that it was a fabrication from one end to the other. And therefore as the memory was not acting under a wholesome and healthy moral law, it acted at random and added with pleasure.

I shall not pursue this point further. I respectfully submit that there are some half a dozen improbabilities in the way of the truth of this man's evidence, two or three of which have struck my own mind as very decisive. In the first place, I respectfully sub-

mit that you will not believe that this man could have stood for two and a half hours, or, as Mrs. Marston testifies, five hours—for they could not get him away from the door, whether he stood there two and a half or five—and that he tells the truth, or is entitled to be heard one moment on the pretence that he tells the truth, when he recites to you in five minutes every word that he heard. There was an earnest and passionate and affectionate conversation of two and a half hours at least, the door ajar, himself in a position where he could have heard every word if the door had been closed. Here you have this young wife, who after wandering about Boston for a month, by stratagem forces herself into the presence of her husband, to apologize for herself, to pray his forgiveness, and in general to win him back by the asseveration of her innocence, and the confession of the wrong she had done—going there to plead for herself two and a half hours; and Coburn comes here and swears to that ten minutes of smut and filth and obscenity and shame and scandal, as all that he heard, all that he remembered. Had she nothing to say for her youth, for the love he knew she had always borne him, nothing to say in explanation of these frivolities of a week; had she no argument to present to induce him to take her back and fold her again to his heart—of all this had she nothing to say? He declares that she was talking loudly and earnestly for two hours and a half, and yet tells you that this little, petty, condensed, fabricated mess of obscenity, is all that he could remember. Is it not manifest that it is all an absolute falsehood?—Mark you! that his attention is strongly attracted there, that he undertakes to record the facts that he could remember, he is sure that there was earnest, distinct and audible talking for two hours and a half,—and he has not given you a hundredth part of what he heard, what we know from our hearts she must have uttered, and all the other evidence in this case show that she must have uttered through her tears, a hundred times over for herself. Every such word is forgotten and suppressed.—I say it is suppressed, that the same malignant temper that would take up a fairly written letter of this poor creature to her husband, and deliberately strike out a material part of it, is capable of suppressing evidence which rests upon his memory, if he remembers a word.

Will my brother on the other side say that it would be very well if we had the rest of the story, but what Coburn states is all very clear and explicit. I answer, we do not know that what he says is true. We know that the man is not honest enough to report those words. I put it to you, gentlemen, that if you had all that conversation spread out before you, as on a record, the whole explanation, every epithet of the whole affectionate interview, overflowing first in speech, and then in conjugal embraces for five hours—if we had every word, how do you know that the little, smutty, fragmentary, barbarous scandal which this man reports, would not be instantly disarmed of its effect?

My brother will by and bye say that there are written lines and you can judge by them—the written lines of the mutilated letter. But there are no written lines left; there is nothing but the fragmentary pretended recollection of this man whom you know to be false. I entreat you to judge me whether I press that argument in the least degree against your brain and reason. You know perfectly well that if he heard what he declares, he heard a thousand times more. If he could report anything truly, he would report more, but the whole is false.

There is one more impossibility about the man's testimony. What do you think of the probability of this young woman, with everything at stake—for it is very clear that her husband was everything to her—going into that room and planting herself at the back side of it, about 11 feet from the door, her husband about 6 feet from her with his back to the door, and of her sitting there with that door ajar, and in a loud, clear tone uttering such a ridiculous thing, talking on, never sinking her voice into a whisper, never dropping her tone in the least de-

gree, but as he says, in so many words, in his disposition, speaking very loud all the time, "I should call it very loud"—he was afraid if he did not make her speak up very sharp that they would say he could not have heard—and telling that story of obscenity which a prostitute would not utter to a half-intoxicated man lying at midnight by her side? Could not she see the door? To be sure she could. The room was full of light, all open. She knew that she was in the house of her enemies. She was there to carry her husband out of their arms and take him to her own; and in a singularly loud "very loud voice," she tells him a story, which, if he had never had any purpose to drive her from his side, would have compelled him to fly with his ears stopped out of her presence. Here is beautiful naivete. He was interrogated on the stand if he did not think this very extraordinary. He said he did not. It was because there was nothing that could not be uttered in a loud voice. He swore that he did not think it at all strange, but come to think it over since, he said that he was very much astonished. I dare say that when he came to write it down, seeing what a quantity of ruffianly, beastly, barbarous, disclosure it amounted to, he thought it best to say that he was surprised. But his ingenuousness is beautiful. Says he, "I did not think it at all strange then!" There never was so great a liar with so long a memory but made contradictions and got himself into trouble. He did not think it at all strange then. Why? He had a capital opinion of her before. He rather liked her, but when he came to think of it, he was surprised that he should not have been astonished at first. "I'm an amazement to myself." And so am I.

Gentlemen, I have one single commentary more to make on that testimony, which I find it difficult to manage with that decorum which belongs to a case of this delicacy. You know very well that one statement that John Coburn represents himself as having heard there, is an enormous falsehood, as well as you know the nature of the man. There is no moral fact of which you can be more certain than this. You remember that John asseverates that she made a hideous confession of a direct act, and that in reference to a remark made to her by Sumner, she said to her husband, "Wasn't he a nasty man to say such a thing?" Now, gentlemen, this is simply a palpable lie. I will tell you what he heard her say, and I am willing to be judged by that interpretation. He heard her say that while she stood at the window at Brighton or Watertown, this man came suddenly behind her, and put his hand indecently on her person, that she burst out crying, and pushed him away, and then she says to her husband, "Was not he a nasty man to do such a thing?"

I put it to you, gentlemen, if that is not more likely than that she should have stood there and made a confession so hideous, so new to Dalton, to have heard which he would have shrieked and groaned aloud, and cried, "Oh, Nelly, Nelly! how could you do this great sin against God and me?" A confession so hideous that he would have put his hands on his ears, and fled from the room. According to this man's story she makes this confession, and when she might have expected to see that agony and torture in her husband's face, she thinks she makes a capital defence by this little lovey-dovey, namby-pamby, sucking-nightingale observation, "Was not he a nasty man?"

You know that to be a palpable lie; representative of a great fool, speaking to her alienated husband, already suspicious and jealous, to whom she had constantly asserted her innocence before, making a communication that would freeze the young blood in his heart, that would drive him to suicide, to murder, and supposing that she took the sting all out of it, and had a good title to go with him to California or any where else, by saying that. It is as if some little girl should run home and tell her grandmother that she had seen a great, bad boy, and she had heard him say, "darnation." I put this explanation to you which I felt it my duty to

make, and I say, as before, Shame to him who evil thinks. The result is elevating and touches our emotions and appeals to our respect. My learned brother's observation in opening, seems to be almost as forcible, that, in the midst of all these explanations and observations, Dalton was fool enough to ask who the fetus looked like. I do not think there is a very strong probability of that.

There is one answer to this man's testimony, which puts an end to him on this case, and I submit that we gain on the merits of our own case by this commenting on the worthlessness of the evidence offered by the libellant, and I answer this story that the conduct of Dalton that night, as we have it revealed to us by credible testimony in this case, gives this story to the hissing and contempt which it deserves from every intelligent man.

I ask you to look at the conduct of Dalton; take the unquestionable circumstances, then all the positive testimony, take the beautiful letter in which the next morning she breathed out her expectation of that new life of promise resulting from the interview, and I ask if you believe for one single moment that such a hideous communication was made. Remember that down to that time, even after Dalton left the jail, he declared that he believed she was innocent, that he loved and trusted her, and wished to God that he could trust her completely. Remember that down to that night, on her oath, with her hand on the bible, and in the pains of the threatened miscarriage, she had declared herself to be innocent; and remember that she then comes into his presence to play her last card for his heart, and then, according to this man's testimony, makes such a confession. I put it to you, that, exasperated as Dalton was, hoping, yet fearing, manifestly determined to fly at once, if the evidence of her guilt should come from her lips, would he not have started from his feet at such a declaration, and cried, Oh! "ruin!" "ruin!" and fled from the door?

You are soon to be appealed to, to give a divorce, because those sensibilities which are respected and which are to be religiously cared for, these susceptibilities of the husband have been outraged.

Try him then as a husband; try him on the supposition that he has those sensibilities, and feels them keenly, and then give him credit for this character. I have to ask you, if one man of you doubts, on hearing such a communication from his wife, he would have exclaimed, "May God forgive you, I cannot! All is over now!" and have left her forever. There is not a husband on the panel that would not have done it; nor a husband who recognises the marriage tie on the face of the earth who would not have done it. Yet does John H. Coburn hear him utter one word? Not one. He seems very desirous of knowing what *Fanny* has been doing. But is that all? No, gentlemen. By all the admitted testimony of this case coming to us by the witnesses for the libellant, and therefore open to no criticism from them, the doors are softly drawn to and locked, and there they are for two hours and a half—there they would have been till daylight if this same John H. Coburn had not knocked at the door and said it was nine o'clock, and asked them if they were aware of the lateness of the hour. What was he doing there? How is the confession just then made for the first time? What has become of that? I submit that it is too clear for a moment's controversy, that the conversation began with the door open, and was the free full, heart-breaking revelation of actual wrong, and an asseveration of actual innocence, that it was full of sorrow, grief and earnest pathos on her part, that she at last caused him to believe the truth, and then the door was closed, and then and there she gave her love to her husband. I have adverted to this more than once. You may take it as coming from my client, or on my suggestion, as you please. In that sweet recognition they spent two hours, two hours and a half. He was satisfied that there had been nothing but imprudence and no guilt, and in that sweet moment of reconciliation, after an absence of two months,

do not be quite sure, that he did not then and there, give her all that a husband can, whether he did so or not, it is entirely immaterial to my argument, which is that his conduct with utterly and instantly a decisive refutation of Coburn's story about the confession, I go further, and show you by a body of positive and circumstantial evidence, that they there made a provisional arrangement for their troubled and yet possible future. They fell into an arrangement, and although he could not live with her openly, until the sentence was imposed, yet he was entirely ready to do everything for his wife, and then and there commenced arrangements for their troubled future,—and I submit it to you it was agreed that they should meet the next Thursday night to mature their arrangements, when they should lay out a scheme of life for the future.

Remember in the next place that Edward O. Coburn admitted that when they were going home, that she said she felt better now,—not because she had made a clean breast of guilt, but because she expected to meet him the next Thursday night.

The next piece of evidence is that mutilated letter, that eloquent orator, that truthful and decisive witness—the mutilated letter. They bring it and offer it as a letter written by her the next morning after the transaction, and they do not dare lay it before you without first erasing eleven lines, which, though incapable of being fully read, clearly show that this poor thing was then and there making provision for every contingency of this meeting on the next Thursday night. They found that she was making too strong a point of it, in taking too much pains that nothing should prevent the meeting, and so they struck out a portion of it. I submit that you take a microscope of a hundred horse power; and you will find a meaning in the erasure, and will see that it is a clear recognition of the arrangement for the proposed meeting; and if you cannot find it in this way, I think you will do so by your reason.

Is there any more evidence? Turn to that letter, which she wrote after the libels was filed, in which she alludes to his promise to meet her and live with her. She then and there distinctly and clearly puts directly to him that affecting appeal founded upon this agreement.

which I am attempting to prove, and I therefore submit that unless you believe she sat down and addressed to his eye a deliberate falsehood, I rather think you will say that you have what passed between her and Sumner. In her letter of March 15th, she writes as follows:

"After telling me, two weeks ago last Monday night, that come what would, you would *live with me*, and that your divorce case should be given up, and that you would send your lawyer, Mr. Dana, up that week to see me;—the very next morning did you not tell Edward you would never see me again?"

Is it not entirely true that he had made that promise that night, and after that revelation which she made, and do you believe she would have addressed that note to him if it had not been so? Was it to make evidence for herself? She writes that to her husband and never expected to see it back again in the world. It was only because Edward O. Coburn influenced her husband against its reception, that she recovered it. It was sent with the expectation that she should never see it again, it was not, therefore, written as evidence. I ask you if playing that last card of love, she would utter a wilful falsehood then? It was written to touch his heart, appealing to his conscience and feelings. Would she then and there destroy with him the tie that she had to his love, by a wilful lie?

There is not a particle of reasonable controversy in this case.

I have now to call your attention to the interview that Mr. Dalton had with Mr. Gove, the Tuesday after this interview with her wife. Here is what Mr. Gove then and there said, according to his testimony:

"When he came in I told him I wished to ask him why he had changed his feelings towards Helen; she was feeling very badly because he had refused to meet

her as he agreed to, and I felt it my duty to see what his intentions were; I told him Helen said they were to meet to arrange for their future life and living together, and I wanted to know why he had changed his mind. He replied that he was sincere in his assurances to Helen, but after seeing his folks he found they were so much opposed to his living with her, that he must wait until after his sentence, when he would make it all right."

The very Tuesday after that conversation, to which John H. Coburn testifies, he declares himself that he is still convinced of her innocence. Once more, gentlemen, I call your attention to the letter which Helen wrote the day after her interview with Dalton. I ask you if it be possible that she could have written such a letter, after such a disclosure as Coburn testifies to. Truth is said to be a great deal stranger than fiction. But after all I submit to you that it is beyond the utmost extravagance of truth or fiction that she should have written such a letter as that after such an interview. She writes on the 26th February—

"My much beloved husband: In our meeting yesterday, I see a bright hope and prospects of a happy future before me. Oh! dear Frank, I hope that the day will come when we shall be happy soon. I feel much happier than I did yesterday."

Why did she feel happier? If she had gone on to say, "because I have now told you all and there is no more beyond it," it might have given some little probability to the argument the other side. "I feel happier than I did yesterday." Why?

"I feel now as if I had a dear husband to live for; before I felt as if I did not care to live; I had nothing to live for. But oh! what a beautiful thought now fills my heart—that I have him, dear Frank, to live for; him to build all my future hopes on; his strong arm to lean on; his dear words and sweet smiles to encourage me; and if I should ever *faller*, I have Frank to say, *cheer up*, Nellie, we shall soon be happy."

Cheer up, Nellie—only one or two adulteries you have confessed!

The modest thing in the testimony of John H. Coburn is that Dalton sits there and allows what he relates.—That is the worst thing he ever did; but I can take better care of it than my brother Dana did,—no that I am supposed to feel so deep an interest in it, but I can give an explanation of that conduct which Mr. Dana cannot. If this was the first time that poor Dalton was utterly unable, when he came to look back to the conversation and confession, to recall it, it would be too dreadful.

Did not this same husband declare to Mr. Richardson, that she had confessed adultery in Fera's Saloon? Did not Dalton make that declaration? Did he lie when he made it and put it in his libel? I think not! and I therefore find an unhappy man with very excellent qualities, but placed in a position that would have shaken down the firm and noble Moor himself. I find him now hearing a confession from his wife which he knew perfectly well, was a confession that she had met Sumner, but no adultery. He understood it perfectly, and held her to his heart for a month afterward, and to his lips through the window grate of the cell for another month, knowing perfectly well there was no adultery. And yet I find him when he comes out, and the working of his jealous doubts, and his strange sensitiveness to public opinion, has vanquished the better part of the man, and I find him a man looking through bewildered eyes, and believing that she had told him that she had committed the great crime of adultery. Is he a man who after the confession would have slept with her head pillowed on his breast for a moment? If so, away with him! He is not a husband capable or worthy of defending his rights. But that is not Dalton. He heard her make the confession about Fera's saloon and was a loving husband for two months. It was after that when he came out from the jail, that his eyes blinded and jaundiced with jealousy, he came to think that she had confessed it all to him. Only a day or two before he leaves the jail he tells her he loves her, means to meet her as soon as he is released, and she writes him accordingly. Then he

comes out, these Coburns gather round, with that foul story of the abortion, filling him with disgust, and his mind is changed. The libel is brought; the excitement of a legal controversy supervenes, and he has brought himself here, and now sit in court and allow these men to swear and play this great trick upon himself, thinking, perhaps, after all, that it is just about as true that she made the confession of guilt in Fera's saloon as that she made the other. I submit that I offered my brother Dana an excuse for his client which he would not feel at liberty to offer. He will deliberately appreciate his position.

I do not believe that the gentlemen on that jury will credit the story of the Coburns for a moment, and I feel that no man is to be affected by it, because Mr. Daiton allows it to be true. Gentlemen, Edward Coburn understands Mr. John H. Coburn better. Mrs. Coburn testifies that in recent rides with her husband—for it seems that their separation is not so absolute but that they can ride out together occasionally—he told her he did not believe Helen was guilty. She says, speaking to her husband, “And could you possibly let John go-on and tell such a parcel of lies?” “Why,” he says, “he heard it all of course”—and laughed. Let that laugh give you the estimate that Edward O. Coburn put upon the evidence of his brother John—“the ribald laugh,” as in the beautiful form of the “Buchanier.” Oh! he heard it all of course, and had a real hearty laugh over it. I understand that laugh as a distinct recognition on the part of Edward that John is lying.

“I don’t believe it.” I do not know but this might relate to what was said about Fanny; but it is no matter. We dismiss John H. Coburn here; I shall have a word or two to say of Edward Coburn and of Mary Hunter, after the usual noon recess.

The Court then took a recess till two o’clock.

AFTERNOON SESSION.

The Court again met at two o’clock and

Mr. CHASE resumed: It is with inexpressible pleasure, gentlemen of the jury, that I say that I shall soon be enabled to relieve you from the further consideration of this case. If the testimony of John H. Coburn, which may be deemed, I think, the foundation stone in the case of the libellant falls to the ground, that of Edward O. Coburn and of Mary Hunter, which is all that is left, need give you little trouble. In regard to that of Edward Coburn, it will be entirely enough, I apprehend, for me to say that even if he was a witness altogether and fully entitled to credit and the confidence of the jury, his testimony falls entirely short of establishing clearly and certainly a confession of the crime of adultery. On the contrary, I shall submit to you by turning very briefly indeed to that evidence as it has been reported, that if he were a witness entirely worthy of your belief, making no more allowance for him than must reasonably and always be made for any witness who comes to report a conversation in words, it is perfectly plain and clear that the respondent intended to state no more to him than that Mr. Sumner had in a moment of surprise attempted an indecent familiarity upon her person by his hand, how, or where, or to what extent exactly is not definitely stated; that she repelled it, and that in view of the circumstances, the manner in which the attempt was made, and the manner in which she encountered and repelled it, she did not feel herself to be in the least to blame. I respectfully submit that if Edward O. Coburn stood entitled to the entire confidence of the jury, making the reasonable and necessary allowance always to be made for the difficulty of hearing language aright at first, and of reporting it with all its qualifications and no more than all its proper qualifications upon the stand, she never intended to admit or dreamed of admitting the commission of adultery; but only that she had been pained and surprised by an indecent approximation of the hand of Sumner to some part of her person, I believe her bosom, that she instantly repelled it, and that she

did not feel herself in any degree to blame for what on that occasion passed between her and him. I shall ask you, so far as it is necessary to this end, to call to your remembrance the testimony of Mr. Coburn upon this point; not that I deem it worthy of any extended controversy, for I do not believe the witness is entitled to the confidence of the jury, but because I believe that fairly and candidly weighed, it is perfectly consistent with every conversation, and every declaration she is proved to have made by credible testimony in this case.

In order to lay the foundation of that review of Coburn's testimony, I beg you to remember the circumstances under which he says she made the declaration. It was on the 26th of February, when, as he says, she was exciting herself greatly, and making great and copious complaints that her husband refused to live with her. She was declaring that he had broken his word, that he had promised to return to and live with her and love her, and had violated his promise; and for the enforcement of that topic and the conduct of that argument she told this story, the whole result of which is that in that case she did not feel herself in the least degree to blame, and therefore she complains of her husband. It is too obvious to be mentioned that if this were the object and this the mode of making that statement, if this was her argument, it would be very extraordinary to presume her to have said, I confess that I merely committed a little adultery, intentionally and willingly, but it was all over in a moment, and therefore I think he is a great rogue, and treats me with great injustice in not being willing to come back and live with me. It would be absurd and incredible that even in the tempestuous passion of angry resentment, he had urged this as a reason why he should return and live with her as a man with his wife. If, on the contrary, all he meant to say, or dreamed of saying, was as testified upon the stand, that in the course of that drive, in Brighton or Watertown, he came suddenly behind her and indecently surprised her by a tender of familiarity with her person, which she repelled with tears and resentment the moment she could command herself, and therefore she did not feel herself to blame, I submit to you that she was making a rational argument in the enforcement of a rational expostulation.

Now if you will go through and weigh the testimony of Edward O. Coburn, even if you felt bound to accept it as coming from the lips of a trustworthy witness, I respectfully submit that the fair result of this is exactly that some kind of indecent familiarity was attempted with her, something which she had not anticipated or dreamed of, but that the instant the advance was made, the moment her senses were aroused to a consciousness of the fact, she pushed him away, resisted it to the utmost, and disappoints it altogether; and that therefore it was that she did not feel herself to blame, or that anything had passed in bad faith upon her part. You will remember that this witness broke out with this testimony quite late in his testimony upon the stand, that he returned to it again in chief, and once again in cross-examination, and I will call your attention for a moment or two to the conversation in which he conveyed it. She said she never had had anything improper to do with Sumner. That is the language of the wife upon the 16th of Nov. She had told her husband all about it, and did not think she should be blamed for it. She said that at the time she was looking out of the window, she did not think she was to blame, and she thought Frank ought to forgive her. Letting it stand upon that mere statement, I take advantage of it so far as to offer that an indecent familiarity which she resisted, and which, therefore, she did not feel to blame for, was all that she confessed. Do you believe that she was so great a fool as to tell such a man as this, in an attempt to show why her husband should live with her, that Sumner took a sudden advantage of her at the first, but that after a little solicitation, she yielded her person intentionally to his low

embraces, and therefore she did not feel herself to blame? Was that a time to make a confession to an act of adultery? If you take his entire testimony, I submit to you that he never even came near her at all, by the familiarity of an indecent attempt of his hand, but then and thus; that she was standing at a window unprepared and not dreaming of so rude an attack, that she repelled it in a moment, and that she did not think herself to blame for it. That was the statement of the witness as he made it at first.

You will remember that he paused upon the stand for a moment that he might recall the details more particularly, and that after that effort of recollection he enlarged as follows: that they went into a room at the hotel, that he made the attempt at the window, that she pushed him away and wanted to have nothing to do with him, and did not think herself to blame. I pray your judgment, upon your oaths, if that was a confession, which was repeated here by that witness, of an act of adultery. I submit to you it is no confession unless the woman is a fool, which nobody imputes. I submit to you, that, being quick of apprehension, reasonably intelligent, and to some extent cultivated, knowing very well whereof she speaks, and how to make it consistent with her case, she cannot have intended a confession. I submit that it would be to suppose her to be a natural fool to believe that she said to him that, being taken by surprise and offered temptation, she yields intentionally to it and was not to blame. At the farthest, gentlemen, if you give the utmost intensity and effect to the language of the witness, it is only that he offered an indecent familiarity, and that the instant she was aware what was meditated or threatened, the instant she could rally herself to an act of resistance, she did so by pushing him away from her; and therefore she thought she was not to blame, and therefore she complained, and thought she had a right to complain of the unkindness of her husband in refusing to keep his promise to her. All this she said she had told him; and after all this she declared he agreed to live with her and forgive her.

Upon the cross examination, he states that she said she had done what she could not help. Could not help committing an intentional adultery? Could not help intentionally yielding and surrendering her person to his embrace? She could not help a rude hand being impulsively placed upon her breast. She could not help that, because she did not expect it; and the moment she perceived it to be there, she repelled it with the force and instincts, and outcries and resistance of a woman. I pray your judgment that that is the fair effect of the testimony of Edward O. Coburn. All the way through, you will remember, in this examination of Coburn, she is said to have declared that she thought she was not to blame. When he came again upon the stand, we asked him why she thought she was not to blame. Did she say she thought she was not to blame because a very young woman, because very inexperienced in the ways of the world—did she say that she was not to blame because in her extreme youth she had yielded to an act of adultery? No, gentlemen, it was because she was standing at the window and he had taken advantage of her position there, and therefore it was that she declared again and again throughout the testimony even of such a witness, this, that she was not to blame. "I was not to blame when my matronly and virtuous person felt the lewd contact of the lascivious and unexpected touch, because, standing by the window, it came upon me by surprise, and the moment I knew it the virtuous woman asserted herself and repelled it." Do you not see what a great fool we should make of her, what a poor miserable simpleton she would be, to say that because the temptation came suddenly, she therefore yielded to it, and therefore was not to blame? And yet she may well have said, that being thus subjected to such a touch as no man has a right to indulge but the lawful husband, and having instantly repelled it, her husband could not rightfully say that she was not the wife that he had loved and married, because of that contact, that touch, that impurity, of which she

was as innocent as Lucretia in the Roman story; and she may well declare that not being to blame, he was cruel and wicked not to keep his promise to live with her.

This Mr. Coburn began to find after a time that his excuse of standing at a window would not quite answer the purpose, and he began to think, under my brother Durant's cross-examination, that, as the excuse of standing at the window might perhaps be sufficiently explained and deemed to be adequate, it would be well for him to volunteer to add to that excuse that she had been taking a little cake and wine, and probably that was the reason. Mark the hypocritical malignity of that testimony. He had stated before that she had been surprised in an unexpected position, and that she resisted the moment she found she was surprised. He perceived that that was a perfect defense everywhere; he therefore thought he would give her a treat of a little cake and wine of his own. It was the cake, the wine, the champagne, which was to account for it; he had not said a word about taking cake, or wine, or champagne—not a word; the whole of it was a sudden, extemporaneous, hypocritical, malignant invention of the witness to color, change, qualify and turn to falsehood his whole story upon the stand, which had attributed to her the excuse of being surprised at the looking out of a window, resisting in a moment, her virtue never yielding. He says to himself, "That is a complete and perfect defense, but if she were to be brought under the influence of a stimulant, wine or champagne, she might have yielded to that surprise," and so he finds his occasion, and treats her at his own expense, as it costs him nothing—to cake and wine and champagne upon the stand. I submit to you, gentlemen, whether it was not as sheer, as malignant, as hypocritical a falsehood as has occurred in the testimony of any witness in this whole case. I am inclined to think that Mary Hunter's story came rather suddenly across his memory, and so he volunteered it, although he was compelled to admit that she had herself said not a single syllable about it.

I put it to you again, gentlemen, with great earnestness, that if the testimony of this witness was entirely trustworthy, making reasonable allowance for the difficulty of reporting language, the state of the case which he makes out against her is no more than can be made out against any young daughter of Boston, pure as the flakes of snow when it falls, standing at the Athenaeum and looking out upon a grave yard, upon whom an intoxicated rowdy should suddenly break in and allow his hand to stray lasciviously upon her bosom, from whom instantly she turns, shrieks, bursts into tears and falls hysterically—not a particle, and that is the state of testimony before you. Is there anything in the evidence of John H. Coburn which in the least degree resembles it! He places it at a time when she is conducting an earnest expostulation to a complaint of her husband—at a time when she is making an argument to show that she is entitled to have him back again; and I therefore put it to you as beyond a particle of doubt that she means so to conduct that argument as to make out a case. Of the two Coburns at confession give me John H. Coburn, for he gets up something which nobody believes. The principles of the two Coburns remind me of Pope's classification:—

"John struts, a perjurer, open, bold and brave,
Ned sneaks, a liar, an exceeding knave."

That is the difference between them exactly. Is Edward O. Coburn entitled in the least degree to the credit of the jury? Need I say anything more than to ask you whether Edward O. Coburn is an honest man and fit to be trusted upon a question of this importance—affecting life, or character, or good fame?

A great deal of credit is assumed by Edward O. Coburn because he wanted to run away and not be a witness in this case, and my learned friend who is so sensitive about the introduction of professional notes in evidence, has brought testimony that I had told to Mr. Gove something about Edward O. Coburn. I do

not complain of it. He puts in evidence that I said something to Mr. Gove about a proposition from Edward O. Coburn to run away. I told Mr. Gove that it was a trap, that it was a trick to catch him, that he should have nothing to do with it, that the less he had to do with the man, right or left, the better. The man meant to make an arrangement in my judgment, and I simply laid down the law according to the books. I had nothing to do with the man; I had no faith in the man; I never wanted to see the man; I said that if he chose to run away I didn't know of a human being who cared where he went, how long he staid, or when he came back. I laid down the law accordingly. He had not happened to be summoned, and I told him that if he was disposed to run away and not be a witness there was no law against it; and that I maintain now. But as to a bargain with him there was nothing of the kind. I did not know that Edward O. Coburn would want to go away, but he knew very well that if he appeared upon that stand he must be interrogated with regard to robbing his father-in-law's safe, and I thought he might very well wish to be out of the way of that. He, who, upon the testimony of Dalton, had made Mrs. Coburn's house a hell, might be very willing to be out of sight of such a controversy. But I do not think it necessarily follows that I do not hate a man I am afraid to meet. Our allegation is that he is here hating Mr. Gove, having done him an injury, and because he is afraid of us, he therefore wants to run away. I do not think it is a very logical deduction that he does not hate us. He may be afraid to see Mrs. Gove or Mrs. Coburn, but he may hate them with a malignity, deep, keen and pertinacious to the last. Is he an honest man? Very indifferently honest. There is a general public rumor current in this community that a thief is not an honest man, and Edward O. Coburn is a thief. He was obliged to admit under your eye, that he took false or true keys, broke into his father's safe, and took all there was. Of the amount he was not certain, but it was about \$1700. He went away and denied it. That is to be a thief, and to be a thief is not to be an honest man. He who would steal his father-in-law's money is not to be believed when he gives testimony against his sister-in-law, the child of the father-in-law. He is not an honest man. You heard the explanation that he attempted to give here, and the malignity and intellectual hypocrisy by which that explanation was marked. He was called upon to admit the fact, and he did so. He was called upon for his reasons, and he said that in consequence of his irregularities he had contracted debts, which he wanted to pay. He wanted a little money, and as some defence of himself against this charge—he said it was under the influences of certain wild ideas; that the memory of this affair had done him great injury. When he was asked how much money he wanted to pay his debts, he said he did not know, but he took all there was; and then he went away and denied that he had taken a dollar. And yet to put himself upon this jury—I care nothing about his defence—as entitled to some confidence from the jury he undertakes to account for taking this money by certain wild ideas. How contemptible a hypocrisy is this! I can very well understand from what I have read and what I have discovered that a husband suddenly made aware or made to believe in his wife's guilt and made jealous by it, might be urged in the tempest to the murder of the adulterer or the murder of the adulteress, and the digging of his own grave. That I can understand, for it is altogether a new mode which he seems to have taken of solacing his grief—that of stealing by means of false keys. It has generally been considered a great stroke of nature in the poet where he represents Othello, when those billows were raging and those storms blowing in that great bosom, as going to the bed, kissing his wife, and then stifling her to death; and after that comes the superb speech beginning, "Soft now, a word or two before we part," and he kills himself. But what should we think of Shakespeare to adopt Mary Hunter's expression, if he

had represented Othello as "blowing off a little" in the first place, by stealing seventeen or eighteen hundred dollars of his father's money? It is hypocrisy, gentlemen, and no truth, no manhood. I submit that the witness is not entitled to the confidence and credit of this jury.

I say next he cannot be trusted for words here because he hates Mr. Gove and he does not and cannot conceal it. He testifies under the influence of malignant feelings. I will remind you of the maxim that "We hate whom we have injured." The daughter was imprudent and so he avenged himself upon his father-in-law's money, because he had become jealous of the child, and now he hates him whom he has injured. And to show you that he is capable of testifying falsely under the influence of malignity, I bring to your attention again that most extraordinary piece of evidence, not to be forgotten, that having had a quarrel with Mrs. Emerson, and she being believed to be quite safe beyond the snow drifts of Maine, two hundred miles off, he, therefore, to indulge that malignity, comes upon the stand and swears in terms that he was aware that six attempts had been made by the instrument of Dr. Calkins to procure abortion upon her body, some of which had succeeded, and in one case he saw the foetus himself. I submit that here was as wilful, as terrible a perjury as was ever uttered in a court of law. I put again: that testimony the holy honor of that intelligent and comely young wife, who appeared for herself and for her sister, and the testimony of her husband, who must have known perfectly well whether a word of this was true or not. I acquit Edward O. Coburn as I certainly do my learned brother in consequence of a suggestion he made yesterday, of all intention in that cross-examination, to carry that malignity farther and to lead you into a suspicion that she lived by irregular means. I misunderstood her entirely. He assures me so, and that is enough. I thought it was indicated by the inquiries, "How much is your husband away from home?" "Do you have occasion to go into Hanover street; into this street or that street?" Do you visit this shop or that, and who pays the bills?" He will tell you when he closes the case, what these inquiries meant. I acquit him altogether, at his suggestion, of any such intention or purpose to bring her under this terrible suspicion.

But I appeal to the fact that Edward O. Coburn remains here, and that he has deliberately and intentionally, under the influence of mere malignity, falsified the truth, and I suggest to you the single consideration more, whether the witness is entitled to be believed in regard to the conversations the words of which he repeats to you. Can he be trusted to repeat words which should be brought here and weighed out by grain and scruple, as if they were the pulses of life, with exact and perfect accuracy, with perfect good faith in weight and measure, as he would wish himself to be judged? This man comes here to report words and confession when he cannot carry a letter from one house to another without sitting down and forging it into a falsehood. He stands here, let me say, in the judgment of this Court on the evidence in this position. He receives a letter from the respondent which he agrees to carry to her husband, that letter which was filled up with new life and new hopes, a new and a dear husband to live for, a future opening before her, a happy meeting next Thursday which she is anxious by all possible attentions to secure to herself, and he cannot bring it before the Court without having first elaborately erased from it every word which goes to show an arrangement for such a meeting as that. I repeat that such a man who has not honesty and fairness enough to keep his hands of forgery, is not entitled to bring in words.

There is that beautiful letter, not a word of confession in it; there it is with a key at the end, opening all its sense, and he broke in and stole the key—*stole the key*; not this time a key for the robbery of his father's store, but for the destruction of the daughter's proofs. I

pray your judgment, gentlemen, that this is the end of Edward Coburn.

From John H. Coburn and Edward O. Coburn to Mary Hunter, whether ascending or descending, is easy—with or without the latin maxim on that subject. I believe if you leave the two Coburns out of the case, you will not be troubled by Mary Hunter. I submit that her testimony was mixed for her exactly as a man mixes rum and water, to drink, and she drank it. In that bronze, strange woman, what do we behold? From her appearance and her account of herself upon the stand, what do we know that would warrant us to give credit to what she swears to for a moment? Where she came from, with whom she has lived, what has been her way of life, who is the father of her child, to every question which my brother Durant puts under the settled practice of the court, the only means by which perjury of an unknown stranger can be detected—to all those answers, with her arms akimbo, “It is none of your business.” I submit to you, gentlemen, that the inference is inevitable, if she could truly and properly answer those questions on her oath, a chaste, well ordered life and conversation, she would have leaped to do it. She would have rejoiced at the opportunity; my learned brother would have instructed her, it would have been his duty to so instruct her to take her earliest opportunity to tell her history, perhaps a humble one; and I submit to you that no other inference can be made from her reiterated refusal to tell us anything about herself, than that she knows perfectly well that it is one of those rare cases, but which sometimes happen, where “the least said is soonest mended”; and therefore she tells us “It is none of our business,” and that is the end. Is that a ground for railing at the witness? No; but it is a ground for saying that we do not know whether that woman knows anything, or respects in the least degree the sanctity of an oath.—We have not a particle of evidence that that foreigner and stranger ever had a lesson from the Bible in her life, that she ever heard a word of counsel from priest or minister, that she ever heard a mass “by bell, book or candle,” that she ever saw a domestic example of purity, that she remembers a father or mother, that she had ever received one single lesson, or one single influence which enables us to believe that she, here and now, feels the obligation of an oath. That she is a foreigner is nothing against her; that, being a foreigner, we should naturally inquire something about her antecedents, was not strange, but it was nothing against her; and if then and there she had frankly disclosed them to us we might have found her entitled to belief; but she buries herself up, she refuses to tell you anything; and I repeat, that you do not know whether from her childhood, to this hour, she ever had a lesson of virtue from anybody, ever came to understand the importance of truthfulness, the virtue of chastity, and the value of character and reputation.

She stands before you here and now, gentlemen, only as a wet nurse and mother, without a husband, whom she will not confess, and it is for you to say if, standing on her alone, if the cause rests on her alone, whether or not she is entitled in the least degree to credit by this jury. The matter and manner of her testimony may be briefly adverted to, and with that I complete all I have to say with regard to her. I submit, gentlemen, she tells a story about saving, about abortion, uncorroborated by any scrap of proof in the case, which totally discredits her testimony. She comes here and tells us that she bought saving, a decoction of which was to be made to procure abortion, and points directly to the place where she says she procured it. Is there any other human being to corroborate her story about saving? We have heard a great deal about Mr. Lincoln and Mr. Melzer, and Mr. Lincoln's lad, yet my learned friend does not produce a tittle of corroborative testimony that she ever bought an ounce of it herself; and you have it on the testimony of Mistress Gove and Margaret Ware, the cook in the kitchen, that they never saw or heard of such a leaf or decoction, and they must have

known if it had been procured and concocted for such a purpose as this.

I am inclined to think Mrs. Gove was not very far from right when she said that if Mary Hunter bought any saving, it must have been for her own private uses. But I acquit her of ever having bought any saving, or knowing anything about saving, for she stated here that, as to the leaf of the same mysterious article of medicine, that she did not know whether it was as big as a fourpence, or as big as a cabbage or burdock leaf, or how big it was; and so it manifestly appears that she swore falsely about this whole matter. It is not necessary to refer to the other testimony in regard to this matter, but you will remember Dr. Clark stated here that any decoction of that leaf would be useless for that purpose, and therefore you would have no difficulty in disposing of the matter, even if Mary Hunter was to be believed. There is another part of her testimony to which I will advert for a moment. Do you believe that that erring, indiscreet, yet decent and comely young wife, comes home from a ride with Sumner, and tells the witness they had cake, and wine, and champagne, and a *devilish good time altogether*? I ask you if you believe that that is the language of my client, or the coarse, vulgar language of the witness? It is language that might, by possibility, *by possibility*, be used by one prostitute to another lying in the gutter at night:—“I was out upon a ride with a man-of-war's man today; we had cake and wine, and a devilish good time generally.” And I could only say that poor Jack had been with very poor company all day (laughter). But I say evidence from such a party as this, uncorroborated everywhere, is not entitled to a moment's consideration.

One thing more and I leave Mary Hunter. There is the story about Helen Dalton looking under the bed. Is it not perfectly manifest that this has been cooked up to hand, and that they have got part of two stories into one wise glass? Says she, “when the libel was commenced, I said to Mrs. Dalton, they could not get a divorce unless somebody saw it, and she replied that nobody could see it, for she looked round and under the bed; and Mr. Sumner took off his coat and wanted her to go to the bed.” I respectfully submit, gentlemen, that that last statement does not greatly assist the argument. It is perfectly evident that she has got a part of two stories mixed together, like the Middlesex witness, who, being hard pressed, said she had got a part of two stories—one she never heard, and the other she made up. (Laughter.)

After this, gentlemen, it is vain and needless to remind you of what we heard from other sources, of Mary Hunter's declarations. She told Mr. William Richardson, Mr. Powers, Mrs. Ware and Mrs. Coburn on four different occasions since this affair happened, that she believed the “poor creature” was perfectly innocent; that she had a miscarriage and no abortion, and that Dalton would never dare to call her as a witness, for if he did she would testify to something that would shame him to the end of his life. But, gentlemen, I do not believe that part of her story. I do not believe she had anything to tell; but it illustrates the kind of tongue she carries in her head, and the kind of stories she is ready to tell. Four different times after the declaration about saving; after the statement of looking under the bed in a room where it is proved there never was a bed—four times she distinctly reiterates that she believes the “poor creature” is wholly innocent; that they have got nothing against her; that, for her part, she knows nothing against her, and that they know too much, as they value themselves, to call her upon the stand at all.—After that—I would not put too much reliance upon the statement, for we have only her word for it,—we find her going by Dalton's shop, when he invites her in, dusts a chair for her, and overpowered her with attentions; and since that time Mrs. Coburn cannot get a sight at her. She is taken up to order; her testimony has been manufactured perhaps by the same criminal fingers that mutilated the letter which

has come before us; and I respectfully submit, gentlemen, that she will be totally discredited by everybody on the jury.

I might have reminded you—it was hardly worth while to do it, it is hardly worth while now, it is brought to my mind by the commentary upon Mary Hunter—of an addition to the general commentary upon the evidence of Edward Coburn, and that is, that he has repeatedly, and under most impressive circumstances, declared he was entirely satisfied that there was no guilt on the part of his wife. We asked him this question, whether he ever said to the Rev. Father Mason, the venerable City Missionary, that he knew nothing against Helen Dalton, but that something would be got up as proof against her; and he expressly swore that he never said to them anything of the kind. We have produced the deposition of Mr. Mason, from which it appears that Edward Coburn told him in so many words, that he knew nothing at all against her, but that he believed something or other would be proved; and this, gentlemen, was long after the confession to which John H. Coburn testified to as made on the 25th of October. And, again, a later and more impressive instance, because the evidence passed immediately under your eye. Ten days before the sentence of Edward Coburn, he and John called upon the witness Matthews, having learned that he had given currency to something to their disadvantage. They called on him to solicit an explanation, told him the time of sentence was approaching, and they wished to converse with him freely, and they wished to confer with him; and they then and there, said, E. O. Coburn taking the lead, and John H. Coburn giving an apparent consent—E. O. Coburn then and there, long after the interview, 25th Feb., declared that he was satisfied that it was nothing but a flirtation; that it might have gone further if it had not been stopped; but, that it was a flirtation, and no guilt, that he intended to live with his wife, and had no doubt that Dalton intended to live with his. I submit to you, therefore, gentlemen, that there is an utter failure of evidence, on the part of the libellant.

I need not, in the view I have been taking of this case, call your attention to one fact. I apprehend it has already been anticipated and long since disposed of. That on reading this entire series of letters, you will find, everywhere, from first to last, perhaps strongest in the first, certainly no stronger in the last, continual and reiterated expressions of remorse, and regret, and grief by Helen Dalton for what she had done. I do not believe my learned brother, upon a collation of that series of letters, will stand up here and contend for a moment, and say, that she ever dreamed of supposing for a moment, she meant to confess by any strong expression, that she had committed the crime of adultery; but on the contrary, I hold it to be one of the best points in this case for that young wife, I hold it to be a satisfactory evidence, that there is yet a heart, and character worth cultivating and saving, that there is yet a wife whom Dalton might be proud and happy to take again to his bed, that no strength of language seems to her self sufficient to express her own remorse and shame for what she has done. She knew when she penned every one of those letters, she knew perfectly well, from her conversation with her husband and the Daltons on the Sunday evening after the Shawmut Avenue tragedy, that he understood perfectly well that all her strong expressions, all her tears, all her prayers to Almighty God to forgive her for her sin, all her regret that she had failed to make him happy, and failed to be worthy of him, were only the confessions of a pure and a chaste heart, that judged itself more harshly than God in his infinite mercy will surely judge it, more harshly than the generous and manly heart could judge it. As she looked back to that time, no language seemed too strong, no compunction seemed too severe, no prayer to God seemed too profound, no promise of a better life too warm, too strong, too heartfelt, to express it all. And now I say, for my learned brother to call

out a single one of that series, and put it forward without its context, by itself, and call on you to interpret it as no letter ought to be interpreted, out of its connection, without the *usus loquendi* of the parties themselves, who perfectly understood it, and without it could not be appreciated,—to do that would be a cruelty tremendous, an injustice from which I think he would shrink back. No gentlemen, you will take this series from first to last, and I will take my chance of a verdict, or disagreement, as you shall find that the strongest and clearest expressions of compunction, grief, guilt, and sin, shall be found at the beginning of the series. After he had seen them, and studied them, and understood them perfectly well, he writes her again and again that he truly loves her, looks to a happier life yet, with the loved one, the trusted one. I might read a sentence or two, but one is enough, for she had clearly and distinctly put him in possession of her mind, on this point. I submit that the purer she was the more confident she felt that her body had been preserved as a vessel of honor for her husband, at the same time, the more distinctly and clearly she appreciated the deep wrong she had actually done. I submit that according to the nature of love that she shall even overstate, she shall exaggerate, shall make more of it than it deserves, even of that miserable flirtation which did not end in adultery. It is to lay herself at his feet; it is to show how wholly she feels with him; it is to assure him of her whole heart laid bare, her whole soul probed to the bottom; and, therefore, it is that you shall find here exaggerated expressions, which, unless you know perfectly well, as the correspondents themselves must have known, their true significance. I apprehend under the rule of law they must be subject to the mildest interpretation which can be put upon them. Here you have the key to the whole, and thank God, they have not stolen this bar if they have stolen the others. "God knows I love you, darling, forgive that vein of folly, although I have sinned—yet not criminal;" that is the key; that is the interpretation of the language, and therefore forward it is perfectly understood between the parties that when she says she has sinned, that she has been wicked, that she has been tempted, that the tempter is in his grave, and she is sorry he had not been there before he presented the temptation, it is all perfectly understood between them from beginning to end. It is the most dreadful cruelty and injustice here and now to desert that perfect understanding that what she meant was, "I have been sinful by my vanity. I have been secretly tempted, by the influence of this young man now in his grave, and I have so far done you a wrong which I shall acknowledge for sin, and pray God while life lasts to forgive me for, but not crime, dear Frank, not crime"—the whole course of the correspondence perfectly understood by them—and to read half-a-dozen extracts from those letters, to show much more strength of affection and a sin which he can never forgive. It is hardly necessary to illustrate my proposition with regard to the meaning of language, the *usus loquendi* of the parties in the interpretation of a writing. "Frank, you know and God knows that when I married you I was as pure as a child could be, and I am now. If you do not know it, your folks know it. Father will not allow his daughter, if she has committed a wrong thing, which no one upholds her in, to be treated thus. Darling Frank, pray our heavenly Father to forgive me my sins, and let us also feel that in a great degree he has. Frank, when you pray, pray that God will forgive your erring wife. I never expect to have any one love me, I have been so naughty; but then I know Frank will love me, if no one else, won't you, darling." After that he writes to her again and again and again: "My own sweet Nelly, my darling, I fly to your arms; we shall be happy yet. Courage; trust your own affectionate husband." Then, gentlemen, I submit that the selection of a single paragraph from such a letter as the last, written manifestly

under the impression of the great joy the communication of the day before in its results had given her, will not be pursued, or if pursued, will be ineffectual with a candid jury.

I therefore, gentlemen, bring this argument to a close. Positive evidence on behalf of the respondent from the nature of the case we cannot bring. Sumner is in his grave; we cannot bring him. We could not bring in evidence of his declarations, but in that silence we have these two persuasive tests; the testimony of a dying man to his innocence—testimony on that solemn occasion when men and women speak the truth if they ever speak it; and the testimony of Helen Dalton who declared herself innocent of this crime; once when her husband, who knew that she was to be trusted, who knew that he could entitle himself to have the joy of belief in her, proposed to her to sink down upon her knees upon the family Bible, and call upon her Heavenly Father to witness whether she spoke the truth, upon which oath propounded by her she declared herself to be innocent; and over again, when the pains of premature delivery came upon her, when, therefore, she was in the very danger and peril of death, in that state where, according to a statute law of this Commonwealth, a certain artificial credit is always to be given to the oath of a witness declaring her innocence then. We submit the proof that from the testimony in this case, she has been uniformly and steadily constant in that declaration.

The charge of abortion by which they poisoned your own minds for a time and the public mind for a time, is wholly false, and wholly disproved. There is no question whatever about this. The testimony of these Coburns and Mary Hunter, all three, will not weigh a feather for a moment in your minds. And then upon everything else, from one end of the case to the other, every particle of credible testimony, you have the deliberate judgment of the best witnesses on our side.

I leave her case, therefore, upon this statement, and respectfully submit that for both their sakes you will render a verdict promptly and joyfully in favor of Helen Dalton—for both their sakes. There is a future for them both together, gentlemen, I think; but if that be not so—if it be that this matter has proceeded so far that her husband's affections have been alienated, and that a happy life in her case has become impracticable, yet for all that, let there be

no divorce. For no levity, no vanity, no indiscretion, let there be a divorce. I bring to your minds the words of Him who spake as never man spake, "Whosoever putteth away his wife"—for vanity, for coquetry, for levity, for flirtation?—"whosoever putteth away his wife for anything short of adultery, intentionally, willingly indulged, and that established by clear, undoubted and credible proof—whosoever does it, 'causeth her to commit adultery.'" If they may not be dismissed then, gentlemen, to live again together, for her sake and her parents' sustain her; give her back to self respect, and the assistance of that public opinion which all of us require.

There was a time in the progress of this cause when that father unaware of what might be produced against her, or by what instruments of defence it would be necessary here to protect his daughter's honor, set on foot an inquiry of recrimination to be instituted against the libellant. Information was brought to his ears on which he directed a certain inquiry; the result was communicated to counsel and that result has been stated on the files of the Court. On that allegation of recrimination we have had occasion to produce no evidence; it was contrary, as Mr. Gove has sworn, to the wishes of his daughter from first to last that the attempt should be made at all. There is therefore by her request—and it is gratifying to the counsel in that respect to be able to indulge that request—not a tittle of evidence upon which it can ever be predicated that he was guilty; as to that he must be found to be innocent. Permit me to say that she would have thought it the last drop in this bitterest cup if her own frivolities and vanities had done anything to tempt or even to bring into suspicion the chastity of her husband. It would have been the bitterest drop in her cup. She would say by me, as she said to him in her last letter, to Frank: "You have done all you can to disgrace me, but no matter now,—I will not blame you: You are my husband for the present; I will not talk against you nor say aught that can make you unhappy. Wishing you much happiness and peace with much love, if you will accept it, I remain, your wife." So may she remain until that one of them to whom it is appointed first to die shall find the peace of the grave.

I thank you for your kind indulgence and leave the case in your hands.

CIRCULAR.

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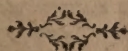
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A N
E S S A Y
O N
M A R R I A G E,

O R,

The lawfulness of DIVORCE,
IN CERTAIN CASES,
C O N S I D E R E D.

ADDRESSED TO THE FEELINGS OF MANKIND.



P H I L A D E L P H I A :

PRINTED BY ZACHARIAH POULSON, JUNIOR, ON THE WEST
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1788



P R E F A C E.

THE writing of the following pages was occasioned by seeing a paragraph in a news paper, relative to a woman in the city who had destroyed herself on account of some infelicity in marriage. The author reflecting how many there might probably be, who were completely wretched, and who, notwithstanding, did not plunge themselves into another world to avoid the miseries of this, thought it might be a subject worthy the consideration of every humane person; and therefore has, in the subsequent pages, set forth the misery of marriage in those who are unsuitably united together, and endeavoured to show the causes of such infelicity, and the lawfulness and necessity of divorce, in other cases beside those at present admitted. And although no essay on this subject has yet appeared in this country, that he has seen, yet this does not prove it unnecessary; and, whatsoever may be the merits of the work, if it opens a way for abler discussion of the subject, the writer will not think his labour entirely lost.

ALL that he can say of his performance, is, that he was induced to undertake it from a strong sympathetic feeling for the weakness and distresses of human nature; and has endeavoured to execute it in a manner most likely to communicate the same to his Readers. He has chiefly aimed at brevity and perspicuity, and if he has advanced any thing new, it is in the way of opinion only, and therefore requests the attention of his Readers to the matter, and not to the manner, of his remarks. But if any should think any thing in the former worthy of making objections to, the writer has more to say, but in regard to the latter, he only requests of the Public a favourable reception.



A N

ESSAY ON MARRIAGE;

O R,

The lawfulness of DIVORCE,

IN CERTAIN CASES,

C O N S I D E R E D.

C H A P T E R I.

A MERICA has been famous for her love of liberty, and hatred of tyranny of every kind; she has not only by arms expelled her foreign foes, but generously extended her liberality, in a great measure, even unto the African slaves. Therefore, it is hoped, the same spirit of indulgence will extend still further—to those unhappy individuals, mixed among every class of mankind, who are frequently united together in the worst of bondage to each other; occasioned by circumstances not in their power to foresee, or prevent, at the time of their union; which should entitle them to relief from humane legislators and the rest of mankind. We believe it will be readily admitted, that there is no circumstance in life, on which our happiness so much depends, as being suitably united together in marriage; and that no foresight that people are capable of, at that time, is sufficient to foresee, or prevent, the many causes that are likely to destroy the felicity of that union; and that it is equally certain, that various causes do destroy it, and render

render them completely miserable; from hence arises the necessity of divorce in such situations, under such restrictions as may be deemed necessary.

The large portion of moral essays generally taken up in lectures on the subject of marriage, shows of what consequence that single, important action of our lives is esteemed to be to mankind; which could not be of so much importance if we were allowed to rectify past errors by future experience. But the whole of our instruction, on that head, generally amounts to little more than if such instruction as this should be given to a traveller in a strange country: that in the midst of the highway, that he must unavoidably pass, there is a deep and dreadful pit, curiously covered from view, into which, if he falls, he can never extricate himself therefrom, but must inevitably die a miserable death. And truly such is the marriage lot at present to many, and to more than can easily be conceived, because the greatest sufferers thereby, for the most part, conceal their situation, to keep themselves from being despised by the rest.

We shall recite, in the first place, the probable causes of such infelicity; in the next place, the miserable prospect of an unhappy couple, and the evil they are the occasion of, not only to themselves but others; and lastly, of the lawfulness and necessity of divorce. The cases we shall briefly state, by way of example, will be taken from the middling class of mankind, as the nearest representation of the others. And we shall only mention the leading and principal dispositions, and leave the judicious reader, from observations and reflections in his own mind, to pursue the description more minutely.

In the first place, the unsuitableness arising from circumstances: as when a gentleman from the country, or farmer's son, marries a young woman educated in the city, perhaps of smaller fortune, but of genteel family, he takes her home; after the first formality of visiting being over, the appearances of every thing around displeases her; she cannot help, after a while, making remarks; sometimes, perhaps, such as these: of his want of neatness in his dress, of the furniture of his house, of the requisites that are wanting on his table, of the indecency of his servants and domestics, of the rusticity of his neighbours and acquaintance. He thinks himself justified in retaliating, in some degree, in remarks on the needless formality, appearances, dress and address, of the citizens; for the present it passes off, but the scene is again often renewed with more dislike than before on each part: from remarks they go to dispute, after a while to jest, ridicule and contempt, and these, by imperceptible degrees, from time

time to time, as occasion occurs. The servants, neighbours and relatives of the husband, mock and sneer at all the wife says or does; she has the dairy, poultry and housewifery to manage and conduct in a manner she never saw in her life, and is unable to perform; her husband complaining of her doing needless things and leaving the necessary undone, which equally displeases him. They disagree in their humours about dress, table, recreations, servants and every thing. From the repetition of disputes (which are the effect of their different feelings only) passions are excited in each, which were before unknown to either. They then mutually torment, thwart, plague, revile, and hate one another; and this, perhaps, takes place in no long time after marriage. I need not add more. It is easy to conceive a great many different degrees of unsuitableness, arising from the same cause, that is, in the manner of their education, that sooner or later has the same effect. But if they are well-bred people they conceal their situation from the world as much as possible.

If a gentleman of good rank and education marries a woman of mean birth, but superior fortune, the case is no better: she despises him for his notions of dignity and elegance that she cannot comprehend; and he reproaches her for her mean, low conceptions and appearances, in every thing; she censures him for his want of wealth, and he retorts upon her for the want of every thing else.

Secondly, those who marry of different professions in religion, although they may not be so zealous themselves as to differ about it much at first; yet, when the warmth of their passion has abated, they will each of them feel their former prejudices, and their respective relatives, on each side, in all their separate conversations with them, will imperceptibly, without design, inspire each of them by degrees, with disapprobation, dislike, and contempt of the manners, customs, appearances and principles of each other; and each of them will be more and more inclined to vindicate their own. All the errors, faults, and misfortunes will be magnified and misrepresented, and charged upon each other by the friends of each party; which will, by degrees, create reflections; sourness, dislike and contempt will encrease, especially if there is any harshness of temper in either party, and falsehood, for the most part, will not be wanting on one side or other to keep up a ferment, until a steady hatred ensues.*

Thirdly, if a young couple marry without consent of parents on each side, the consequence is nearly the same as the last;

* A steady hatred will always begin, as soon as the pain they receive from each other is greater than the pleasure.

last; the animosity of the friends of each party is greater; they refuse to assist their children in a settlement in the world, but reflect on each other, and foment uneasiness and sourness in their children, which encreases with their strait circumstances in the world; each of them become weary of their situation; their company grows painful with each other, for the same reason as in the last case; they conceive an aversion to each other they know not why, and their tempers are soured towards others they know not for what; this creates enemies; poverty, contempt and aversion follows.

Thus it is with the passions of the human soul, as with the strings of a musical instrument: one being disordered, spoils the musick of the whole, and produces nothing but disharmony.

Fourthly, when a couple, with mutual affection, and naturally good dispositions, agree to unite in marriage; but, through warmth of passion, or affection, that would not perhaps wait until a settlement, or means of a living, could be provided; they misconduct, or make what is called a misstep: they are then without remedy not only disowned, but exposed to the world; and now they are not only looked upon as children of sin and disobedience, but as malcontents and enemies to the society in which they were educated. In this situation, deprived of the confidence of their fellow citizens, they are left to provide for themselves;—their parents* choose rather to give or trust their property in the hands of children who have conducted better; a coldness and shyness takes place among all their acquaintance; they seem as if they belonged to nobody, and nobody to them; they must associate with inferiors, or none at all. Visits are made into the neighbourhood, and enquiries into every part of their conduct, and how they behave, and if they are like to make out in the world. And those visitors being fully prepossessed with the above opinion, they operate as sieves,

or

* Though as children have nothing but what they receive by nature and education from their parents, tutors and companions, the infamy rests ultimately on their parents and those who have the care of their education, (especially when they live among those of their own profession) and not on themselves, who are ignorant of their own weakness and of the evil consequences that will attend, until it is too late to prevent them. The Chinese laws make communities answerable for offences committed within their respective authorities; parents for the misbehaviour of their children; concluding that they must have neglected their education, and magistrates are severely punished for those crimes committed within the districts of their authority. Modern Universal History, vol. viii. p. 153, 172. Antient Universal History, vol. viii. p. 266.

or skimmers; they take away all the dross, and leave the good behind; their characters are too respectable to be questioned; they sow their tares as they go, the opinion of the world is soon formed in regard to their worthlessness, and they are accordingly treated with contempt.

The unthinking couple cannot help murmuring at those from whom they receive unmerited affronts; this never fails of creating a number of real enemies, who constantly magnify their faults, and misrepresent all they say or do; they find themselves not only deserted by their acquaintance, but their nearest and dearest friends are hostilely armed to do them every injury.

In this situation, unconscious of any fault, they reflect on each other as the cause of their misfortune, by some indiscretion or other. They tire each other with complaints they cannot relieve, and in this state of sourness and discontent, every tale of calumny and falshood, makes deep impression on them; and lowness of spirits, and inactivity of body ensues, when the contrary is most requisite for their support; then poverty and ill-humour, and all the train of evils and calamities that can befall human creatures in distress, attend them to the end of their days.* For the honour of human nature we could wish the above representation was entirely groundless; yet we believe this will not be found an imaginary description by those who will be at the pains to examine what becomes of many of those who are thus disowned.

And here we cannot help making a reflection, though not immediately relating to the subject.

O ye pastors of flocks and heads of societies, what sentence do you expect to receive at the last day, for making these numerous sacrifices of your most innocent lambs? The powers of nature are strong in the most perfect parts of the creation; youth may plead ignorance of the consequence, but age cannot; you know well, by experience, what you are about and what will be the consequence of your doings; neither does it deter from these offences, because they know not their punishment until it arrives, nor even then from whence it springs. Their crime certainly hurts not you; but it is not the ruin and destruction of their perishable beings and livings here alone you seek or effect; but perhaps of their precious, immortal souls for ever hereafter, at least as far as you are capable of effecting it.

How differently did the Saviour and Judge of mankind sentence the woman taken in adultery: "Neither do I condemn

* See page 12, 13, 14.

damn thee, go and sin no more," was all his reproof to her, when she told him no man had condemned her. Not so his sentence when he pronounced condemnation, and so many woes, on the teachers of that day, that bound grievous burdens on other men's shoulders that themselves would not move with one of their fingers; think to yourselves if this be not a parallel case, and how you will answer for it; think where the rich man lifted up his eyes in torment, and how you will abide a like situation, if the scene should be changed for you. But if you are more innocent than these victims, heaven will regard you, and this reflection will not hurt you.

But to return from this digression: the observations we shall make next, are, upon unsuitableness of temper. If a man of a subtil, proud, unforgiving temper, marries a woman of a passionate, provoking, unreserved disposition, he accidentally affronts her; she immediately, in the most unreserved manner, affronts him in return; he conceals his resentment, but will frequently afterwards sting her with his witty sneers, in a manner she cannot guard against nor easily bear; her anger is over; she bears it for a while; but at last she affronts him still worse where he can least bear it: he now never omits any opportunity of exercising his malicious wit upon her; they soon grow intolerably weary and hateful to each other.

There are many other bad tempers and dispositions that would tend to make any unhappy if indulged to extreme: such as incessant scolding, abusive and indecent language, cruelty to children, excessive fretfulness and impatience about things unavoidable; many of these qualities would become moderated on a change of companions, so as to become agreeable accomplishments: as when a compassionate man of fortune marries a tender and weakly woman that is ever complaining; he affectionately sympathizes with her in all her complaints, and exercises a very sensible and peculiar pleasure of his own, in giving her those constant proofs of his affection, in the attention he shows to her wants; and receiving hers in return, which he could not do in a woman otherwise constituted. Also a very good-natured man married to a passionate, severe-tongued, though otherwise good wife; when she is suddenly provoked, he is remarkably pleased with those sudden sallies of her wit and eloquence, although it should be directed against himself; he looks upon them as marks of her wit and spirit, and attention to her business.

A very passionate couple that sometimes vent their full rage at each other on certain occasions, having fully satisfied their resentment, their affection returns again to each other,
like.

like a tide, with more fondness than before, and rather encrease than abates affection.

Cruelty to children is so unnatural, one would be tempted to think it could not exist, did not experience evince it; it must proceed from affections wholly misplaced on objects quite distinct from the human being, and themselves tormented with some kind of passions or desires unlawful, unsatisfactory, or impossible to be enjoyed; or what will be found to be the same thing, when kind and natural affection in companions to each other is lost, and bitterness and cruelty succeed.

A liberal and a mercenary, a polite and an impolite, a candid and a deceitful disposition, are unhappy united together; but happy if their qualities are alike. But more unsuitable still are those of religious and irreligious principles when they are united together.

A couple kept low in the world by the hand of Providence only, go through a series of trials, hardships and difficulties together in raising a family; their affections and attachments encrease, like two cast away seamen, or unfortunate soldiers, that have been companions, and shared the same toils, travels, dangers, and distresses together, and mutually assisted each other for a long series of time, have a greater attachment to each other than they can possibly have to any else whatever.

Moreover there are incidental circumstances that will entirely destroy the happy marriage-union; lying, that father and mother of all wickedness, because it screens and protects it, is yet unrestrained and unpunished by any law, civil or religious; and hateful as it is to God and man, doubtless prevails among some of those esteemed the best, as well as the worst of mankind: I say lying is in full practice among us, and one judicious, well framed tale, by a malicious person, will excite such secret jealousy, uneasiness, and doubts of each other, and open the way for so many more of the same kind, of whatever kind they may be; they seldom or never are got over, but foment, by degrees, to the greatest hatred and rancour.

Some are compelled to marry through the force, fraud, deception, or artifice of their friends or others, and conceive the greatest aversion immediately. We do not say these will not ever be reconciled to each other, but that much smaller matters of disturbance, such as we have described, will render them thoroughly irreconcilable.

The

The last instance we shall mention, is, a violent, unchangeable affection for some other person besides those unto whom they are married. William Penn, somewhere says, marry a woman thou lovest, or thou wilt love a woman thou never married; this may be equally true when we cease to love those unto whom we are married.

It may be thought needless, perhaps, to mention those incidents that so seldom happen, but we believe it very often happens, sometimes to our certain knowledge, perhaps much oftener than can easily be conceived; and when that is the case very great disturbance must ensue; in public places they are likely to happen most frequently, but it is not likely they should often come to any ones knowledge, much less to the public: more especially when we consider the powerful effect of shame, and the propensity it has to conceal what is thought to be a disgraceful passion. Read the accounts physicians sometimes give of modest women, of otherwise unblemished character, actually expiring in child-birth, in the most excruciating tortures, rather than own their situation, although earnestly urged to it with promises of secrecy, and this is because they were unmarried, and thought it would be a disgrace they could never survive.

Plutarch relates an anecdote of the Milesian virgins, which merits the attention of the philosopher: "Multitudes fell by their own hands, doubtless in that trying age when nature, giving birth to restless and turbulent desires, inflames the imagination, and when the heart, astonished at new wants which virtue forbids to gratify, feels pining melancholy succeed to the sportful tranquillity of child-hood. Nothing could stop the contagion; a law was made condemning the first who should be guilty of self-murder, to be brought naked and exposed in the market place; those young women were not afraid of death, but they were afraid of shame even after death. Not one of them, henceforth, made an attempt on her life."

It had more become the wisdom and goodness of the legislature to have prevented, if possible, the temptation, than to have inflicted a punishment worse than death, on a crime that proceeded from the powerful effect of nature only, and that in its most innocent state and stage of life.

We have had accounts lately of the Reverend Mr. Hackman, falling violently in love with a Miss Ray; a lady who lived sixteen years in the family of lord Sandwich by whom she had nine children; he grew so insupportable to himself, that he meditated the destruction of both her and himself; he loaded two pistols, and as she was entering a coach he discharged

discharged one at her and shot her dead, and the other at himself, without effect; then delivered himself up to justice and was executed. This appears to have been the case by his confession, in the pathetic speech he made at his trial.

And here we might fill a chapter with quotations, but as they generally mislead the Reader, we will omit them. But to what other account can we so reasonably attribute the strange disturbance of mind we see people undergo, without knowing the cause: the many disorders besides melancholy, dejection of spirits, distraction and suicide, physicians tell us, proceed from a disturbance of mind. All our passions encrease with age though more concealed; this, as well as others; and we believe the most gentle, mild and friendly dispositions, are the most likely to be liable thereto.

Thus we have recited a great many causes;* any one of them may be sufficient to destroy the felicity of marriage, and render perfectly miserable that union, that should, of all things in this world, yield us the most perfect enjoyment; or, at least, sweeten the bitter potion that so frequently falls to the lot of human nature.

But it often happens that many of these causes do unite and join in one and the same effect, and proportionably encrease the mischief they tend to create; and when that is the case, who can conceive the disturbance they may probably give, or a remedy equal to the disease, other than a separation.

And now we are come to the second part of our observations.

C H A P. II.

Of the miserable Prospects of an unhappy Couple.

BUT it may not be improper, in the first place, to set forth the blessings and advantages of an happy union in marriage, in order that the different consequences may appear more distinctly in the comparison.

When each party with sincere, mutual affection, and good dispositions, nearly equal in fortune, and with the approbation of parents and friends, the same in education and way of life and religion; are fortunately joined together in marriage, all things seem then to strengthen the union and not destroy it; such appear to every one as if actuated by one soul, a most consum-

* More causes might be enumerated, especially in second marriages, but those we have recited are sufficient for our present design.

consummate pleasure, joy, and satisfaction appear in the countenance of each; their presence, and all their behaviour to each other, seem to inspire a kind of inexpressible pleasure to the beholder, like the joys of the blessed; for good, as well as evil, is communicative by sympathy or example, and such being perfectly happy themselves, it gives full and free exercise for all the gentle, kind and friendly dispositions of the human soul toward themselves and others, even of their enemies, if they have any; but as their friendliness appears on all occasions, there is none but those perfectly overcome with evil dispositions themselves, have any inclination to injure them, but on the contrary, a kind of zeal to do them good. Their relatives by marriage, on each side, instead of detracting from, are commending them to each other, and assisting them in the world; and the bulk of mankind appear to them as the most upright and friendly beings in nature. And as their passions and desires are moderate, they see things nearly as they are, and plan their conduct more wise accordingly; and as they feel their spirits lively, they are active in business, and if their circumstance is but middling in the world, their gains are sure and constant, and in a few years are increased beyond expectation.

Their good example not only spreads a kind of lustre round them, and communicates its likeness every where, but operates as an impenetrable guard to their character; if malice or ill-will should raise a tale of calumny against them, it dies where it begins, and its author is detested. Their children partake of the good qualities of the parents, both by nature and example. Thus it will appear, if the above case is truly stated, that happiness causes virtue and not virtue happiness, as is generally supposed; and whoever will be sufficiently attentive to what passes in his own breast, will be satisfied of the truth of the observation.

But now let us reverse the scene: a man and a woman of good dispositions naturally, but who unfortunately marry under one, or all, of the before-mentioned disadvantages, have all the evils resulting from them; their little comforts leave them one, by one, and peace and tranquillity become strangers to their breasts; and finding themselves miserable at home, they must and will seek enjoyment somewhere; we have mentioned the danger of an unchangeable affection where it cannot be indulged, and surely we need not mention the many wandering imaginations and desires of every kind; the many pastimes, amusements, and, perhaps, vices that must and will ensue; the continual increase and exercise of all the vicious,
irri-

irritating passions and pleasures; we need not be particular, the bad example they set to others, and the many innocent people they draw into their practices; the loss of time, neglect of economy, disregard of their worldly interests; or, if restrained from these by religion, the fear of losing their reputation, or of excommunication; then melancholy, extreme avarice, or passionate desires after worldly possessions and honours alone, as their only enjoyment, frequently take place: here they have the men of the world to contend with and oppose; interest against interest, and honour against honour; a thousand crosses and disappointments, unavoidably interfere and irritate them; every affront makes an incurable wound; every virtuous feeling is sacrificed for the smallest gain; the greatest severity is used in their families to gain an estate, and the greatest oppression and dishonesty abroad; in either case their vices are so conspicuous that the virtuous part of mankind become their enemies; their enjoyments are precarious, unnatural and unsatisfactory, and their souls still wandering in search of what they cannot find, and being extremely wretched themselves, they cannot help striving to make others so by detraction, from envy, selfishness and views of competition: all mankind are interested in opposing them in their own kind, and do it accordingly; which makes the whole mass appear to them as a race of devils, and the unhappy wretch is viewed in the same light by others. Their children are mis-used and mis-taught, both by precept and example; and all the evil they intend others is generally returned back on themselves tenfold. As old age advances and naturally draws them toward their latter end, their pleasures of sense are abated; they can only exercise reflection on what is past and what is to come; weakness and diseases encrease, and give them warning the awful period is not far off, when their being and existence here must cease, and they must give way to another generation. Alas, on what can they reflect but on a long life past of extreme wretchedness and pain, amidst surrounding felicity? On the many ways and means they have used to afflict others, and others them, more especially those who should have been the dear companion of their lives? and also of the manifold sins and transgressions they have committed, in consequence thereof? And lastly, on what is to come? How shall we describe it, seems it not like a dark and hedious monster stretching forth her dreadful jaws to close upon the trembling wretch forever? And this is the final end and final hope of him, or her, who but a few years before thought, that binding themselves in the
bands

bands of wedlock, was leaping into the lap of Paradise, and entering in the sure road to heaven and happiness, and the joy of angels. And yet, unwelcome as this prospect of final dissolution appears, it seems it is more welcome, oftentimes, than a being in this world under the before-mentioned disagreeable circumstances. But nevertheless, we do not pretend to say, that all this is the certain consequence of infelicity in marriage; but only that it most frequently is so. Notwithstanding constant private devotion, frequent conversation with sincere friends, or engagement in some very pleasing study or employment, will in a good degree supply the deficiency of marriage bliss, and prevent, in a measure, the evil consequences. But are we to expect every one wise, or fortunate enough to obtain them? if they are not, their misfortunes are without remedy. And here the scene is changed; misfortunes produce vice, instead of vice producing misfortunes, as is mostly supposed; or rather that they go hand in hand, and promote each other.

Thus, if the foregoing observations are just, there appears to have been one general mistake, that teachers in religion, moralists, and mankind in general have adopted; that is, that reason doth, or ought, to preside over our affections, when the fact in reality is otherwise; our reason, commonly so called, neither can, doth, nor ought to govern our affections, but only regulate them, and govern our actions and contrive and contribute means to indulge them; if our affections did not rule, neither man nor woman would ever marry, or propagate their kind, labour for posterity, or hazard their lives in defence of their friends without reward, or do any thing through pity, compassion, or disinterested regard to their kind; or, in other words, be good or virtuous; but exceed beasts in savageness and yet be less wise. And our affections, if strong, will be found, in reality, rather to encrease, in proportion to the endeavours we use to suppress them; because it causeth us to meditate on the object of our affection or aversion, and by constant meditation to fix our love or hatred more durable than before: neither can we easily expel from our thoughts, the object of our attention, if a lively sensation of the good or evil we have received from them be often present. And it is the duty of rulers and instructors, to lead and direct our good affections, and to indulge them in good and worthy objects, and not to force them, otherwise they will be found to exert themselves like forced waters and break the strongest bounds; or secretly undermine the works of the workman, to their great damage and hurt. For our evil af-
fections

fections are frequently no other than our good affections forced, or mislead from their proper objects; and this indulgence of our good affections is the only sure way of preventing our evil ones, otherwise one mischief begets another, and we punish misfortune instead of vice; it is like an unskilful surgeon that cuts off a limb he can not cure, to hide his ignorance and save his credit.

And now we are come to the last part of our essay.

C H A P. III.

Of the lawfulness and necessity of Divorce, and the Benefits deriving therefrom.

THE reflections that naturally and unavoidably arise from the above recited facts and considerations, are: doth God require this sacrifice of our happiness, or in other words, accomplishment of our destruction? or, would not this supposition be more applicable to the enemy of mankind, who, they say, goes about like a roaring lion seeking whom he may devour? If our Creator seeketh or rejoiceth in our infelicity, for what purpose did he pour forth in the creation such a profusion of ornaments and delights? delightful objects for sensation and reflection; such multitudes of fruits and flowers, meats and drinks, pleasing objects for the eyes, and sounds for the ears, and grateful smells for the nostrils, and ten thousand pleasing subjects of contemplation for the understanding; and herbs for food and for medicine, and remedies for almost every disease, so various and numerous, that it is impossible to enumerate them in every part of the creation.

The pangs of child-birth are to give life and joy to the child and parent; the pains of sickness and wounds to confine the patient to his bed until he is healed, and to warn him to take especial care of that tender frame his Maker hath been pleased to give him, and his sensations of pain and pleasure are his motives to action and means of happiness. But for what end was unhappy matrimony instituted or compelled to be born, when there is an easy remedy always at hand, and not denied to the meanest slave, that of changing his or her master?

And as slave-keeping is justly becoming detestable in this country, it may not be improper, in this place, to make a comparison between a slave and an unhappy, married free person: so that a relief may appear as necessary to the one as to the other, if the married person, as such, may be esteemed equally worthy of our attention and regard.

Slaves,

Slaves,* almost always, by complaint or remonstrance to their master or others, may change their master, until they have found out the most moderate. And although always at call to come and go, yet their common portion of labour is seldom equal to that of a free person; they mostly eat the same kind of food with their master, their cloaths are sufficient to keep them from suffering; they are relieved from the care and concern of providing for themselves and families: bodily correction they can mostly avoid by submission and fair promises, and this they often regard no longer than it smarts, which is soon over; they are not confined to their master's apartment, to be always tormented and abused; they have frequent holidays of sport, recreation, and pastime, at which they contrive to crib for a feast, and revel the whole night in merriment; where the most unrestrained liberty and joy abounds; they are under no restraint from religion, morality or fear of losing their reputation, or of excommunication; their love is all delight; they feel no dread from future consequences; they marry with whom, and for as long as they please, and no longer.

They are all of one sentiment in morality and religion; they are always esteemed by their masters and others, if they perform their service faithfully, and when age comes on they are sure of subsistence for life, as good and much easier than when young.

But where is there any relief to the miserable, hen-pecked husband, or the abused, and insulted, despised wife? We forbear to recite the many ways and means they take to afflict and torment one another.† They are not only confined like a criminal to their punishment, but their confinement must last till death.

But perhaps it may be said, that if mankind were at liberty to separate and marry again, the matrimonial tie would become less binding; one separation would make way for another, and men and women would change from one to another like beasts and their families and kindred would be unknown and unprovided for, and their names and distinctions lost.

We

* Alluding to the slaves of Pennsylvania and New-Jersey.

† That the pains of the mind exceed those of the body we may learn from hence: heroes, martyrs and those persecuted for religion, receive the greatest bodily torments not only with patience, but tokens of pleasure, and seek occasions of receiving them when they think the cause they are suffering for redounds to their honour or glory. But the most delicate fare of the most voluptuous person, yields him not the least pleasure whenever so little galled or fretted in his mind.

We should not propose to set men and women wholly at liberty to separate and marry at pleasure; but only on complaint of each or either party, and the cause inquired into, and their children, if any, provided for out of their estate equally, and liberty given to marry again and their estate divided between them; but not at liberty to repeat the like often. This much might serve for a trial. But we do not suppose an inclination to part would often happen, or any inconvenience arise, if they were left wholly at liberty in this respect.

For we see, in the order of the creation, those creatures who bring forth their young quite helpless into the world, where the female alone is unable to defend and provide for them, nature has impelled them, by secret and powerful instinct, to pair together in couples for their mutual defence, and support, without which it would be impossible for them to exist; as we see remarkably in birds and some beasts, that are helpless when young; it is not so in cattle that are able to shift and provide for themselves immediately.

And mankind, in a state of nature, all of one religion, custom, and manners, never incline to separate, although not compelled to remain together; there appears to have been no incitement thereto, as has arisen through the various stages and changes of our civilized state, without a change of custom, as was necessary in this respect; civilization having, in a manner, changed our natures, by introducing new kinds of sensations, as described in the foregoing part of this essay.

And as there is no creature nearly so helpless as the human species in infancy, so neither is their any nearly so violently attached to each other; not in the way of sudden passion, but unchangable affection. Providence having wisely proportioned their affections, in such a degree as the necessity of their nature and situation requires, in order to go through and bear a series of trials, troubles, anxieties, and cares, needful to raise and support their otherwise helpless offspring.

And when the human species are confined, in their choice, to those of the same way of life, manners, religion, or education, and unite through mutual affection, they are directed by secret instinct to those whose tempers, qualities and dispositions are most suitable to their own. Or if it does not, it is mostly owing to some separate views, such as the prospect of an estate or other circumstances, or perhaps, when too much confined in their choice, as is the case with some young people restrained by their parents, (to use my former simile) like confined waters breaking bounds, too sudden a flow of passion

passion ensues toward those objects whom chance presents to their view and acquaintance, and overcomes and precipitates them into a union, before they have time to examine their own breasts; or, in other words, passion overcomes their judgment, when both should unite together in forming the happy connection.

Living together as man and wife, is, doubtless, as old as the creation; but many ages passed away before any form of marriage was instituted, and the man took the woman with the parents' consent, and lived with her, and she became his wife.

Thus we read of Abraham sending his servant to take a wife for his son Isaac; he did according to his instructions and brought her home with the consent of her parents, and Isaac received and took her into his Mother's tent, and he loved her and she became his wife; and this was all the ceremony; the whole of the transaction is very particularly related by the historian, and so material a circumstance as marriage would not have been left out. It was nearly the same with Jacob; he agreed to serve Laban seven years for his daughter Rachel, and they seemed to him but a few days for the love he had to her, and at the end of the time he said, give me my wife, for my days are fulfilled.

Moses allowed a man to put away his wife at pleasure, yet we do not find that it was often practised; but on the contrary, they had the greatest difficulty to separate those who married into strange nations in the time of the Jewish captivity, as may be seen in Ezra, chapters ix. and x. and we read in Nehemiah, on the same occasion, in the xiiith. chap. and 25th. verse, that he contended with them; and cursed them, and smote certain of them, and plucked off their hair, and caused them to swear by God, saying, you shall not give your daughters unto their sons, nor take their daughters unto your sons, or for yourselves. So sensible were the Jews of the impropriety of strange marriages; yet we do not read that a separation was really effected. These instances show how little danger there is of separations becoming too frequent.

But it is probable they will become more necessary, and frequent as our manners shall become changed and varied from those of the primitive ages: but never, in no age or nation, was marriage esteemed any other than a civil contract, or any thing so divine, holy, or sacred in it that it might not be dissolved by the parties contracting, until Christianity took place, which leads us naturally to consider of Christ's command in this respect: if there was any thing in the
Christian

Christian doctrine that would tend to destroy the peace and happiness of mankind, we should be apt to reject it entirely, as something that had got in by mistake. But perhaps it may appear otherwise.

The Pharisees came unto him, tempting him; saying, *Is it lawful for a man to put away his wife for every cause?* The question is doubtful in every sense, for they came to him, tempting him. It is impossible, without hearing the words spoken, to determine the full meaning of the question, for if the emphasis of the speaker should be placed on the words *lawful*; the question would then be, not concerning who might put her away, or for what cause, but if a separation at all was *lawful*. If the emphasis of the speaker should be placed on the word *man*, the question would then be, not concerning the lawfulness of the separation, or for what cause, but if the *husband* alone, without consent of his wife or any other person, might put her away.

But if the emphasis should be placed on the word *cause*, the question would then be, not concerning who might put her away, or the lawfulness of the separation, but whether she might be put away for *every cause*, or only *some causes*, and as the question is doubtful, so is the answer. He tells them, in the beginning God created male and female, for which cause a man should leave father and mother, cleave unto his wife, and they twain should be one flesh; what therefore God hath joined together let not man put asunder. That Moses indulged them in putting away their wives on account of their hard hearts; that it was not so in the beginning, that whosoever put away his wife, except for fornication, and married again, committed adultery.

In the fore part of his discourse he undoubtedly referred to that secret and powerful instinct, or strong mutual affection, that joined men and women together as at the beginning, in a state of nature; such as we before observed united Jacob unto Rachel when seven years seemed but as a few days, for the love he had unto her, and these he calls those whom God hath joined together; and such let not man put asunder, he could not mean the priest, the magistrate, or themselves, for they are not God.

In the next place, he forbids the cruel custom of the husband alone putting away his wife for every cause; without regarding her feeling or situation, and declares, such as do and marry again, commit adultery.

The whole of the discourse amounts to this, that such as are joined together by strong, mutual affection, let none cause
their

their separation, and let the husband alone put away his wife for no cause but fornication.

Neither of which declarations affects our argument in the least, that men and women may not part by mutual consent, or laws of the land, or when mutual hatred has taken place, and marry again when God shall join them together as at the beginning. But it seems as if this passage had been the occasion of all those scruples, concerning the separation of man and wife, in the early ages of Christianity, and handed down to us until this day.

And so it should seem from the three succeeding verses of of the same chapter, Matthew xix. from verse the 10th. to the 13th. compared with Matthew, chapter v. from the 27th. to the 31st. verse, as if emasculation was advised; and as such, some of the first fathers of the church believed it, and received it; but surely such doctrines need not a serious refutation.

And here we submit to the judicious Reader, what merit is due to those (the greater part of mankind) who implicitly follow guides; and what to those who reject them, in many cases, in favour of common sense and their own understandings.

If our Creator, as we before observed, seeketh or requireth our infelicity, he hath then no longer the attribute of a God, but of a devil. But if our good affections are misled by our instructors, they are converted into evil affections, and drawn from their proper objects, while we ourselves have eyes to see and hearts to understand, then is our Creator guiltless. For if we, having eyes and understanding, freely give them to our guides and walk without, then are our selves only accountable for our stumbling and the pains and bruises we feel in consequence thereof.

It will be next said, what has been the universal custom for so many ages, must have had some great advantage or benefit arising therefrom; found out by the experience of past ages that we cannot immediately apprehend, but upon a trial, otherwise would be found extremely injurious to society. This obliges us, as far as we know, to relate the customs of other countries.

The Indians of America and Negroes of Africa, and savage nations of various kinds, live according to nature, that is, they unite or part, as pleases them, without compulsion; generally unite and live as man and wife, and are faithful to each other as long as they live agreeably to natural instinct.

In France and Italy every man has but one wife, but every wife has, if she pleases, a lover that constantly visits and attends her, with her husband, to all public places, and the

the husband looks upon him as his friend, and esteems his wife in proportion to the rank and quality of her lover; this gives him no uneasiness, because he acts in the same capacity to another lady, if he pleases.

In England, it is said, the nobility marry to add to their rank and estates, but indulge separate pleasures afterwards, at plays, balls, masquerades, dancing matches, and other diversions, without offence taken on either side.

In Turkey a man may have four wives and as many concubines as he pleases, but if a complaint comes to a magistrate that he doth not perform the duty of an husband once a week, he is obliged to put some of them away. In Persia a man takes as many wives as he pleases, and for what time they agree.

In India the women are compelled, by the custom of the country, to burn themselves alive with their diseased husband, in honour to their memory.* This is fulfilling the text literally, what God hath joined together, let no man put asunder; and shows the impropriety of adhering too strictly to the letter, in matters of great importance to our welfare.

Here are two extremes, and it is most probable, that there are different degrees of practice between them. And if we may judge reasonably here, as in most other cases, the best mark to stop at is the middle way, for the powers of nature in all animate, as well as inanimate bodies, gravitate to a middle line, like the vibrations of a pendulum, whose center of gravity is equidistant from the extremes of its motion, and our present practice is but one degree distant from the last mentioned worst extreme.

From the above-mentioned instances it doth appear, the sentiments of mankind in general are very different from those of our present practice, and that there are no inconveniences arising to the public from one custom more than another, except the happiness the parties may receive themselves, and thereby communicate to others; which surely themselves ought to be the best judges of.

Then the question will finally terminate here, are they, or are they not, judges of their own happiness? If they are, why are

* As some of our Readers may incline to doubt the truth of this account, we refer them to Doctor Hurd's History of the Religion of different Nations, where they may see the practice largely and particularly related. Also Marius D'Assigny, in his History of the Heathen Deities, saith it is a custom of the Indians in Asia to this day to sacrifice and bury the dearest wives of Princes with them; for they believe in the immortality of the soul, and therefore send such persons as have been dear to them, to serve them in another world, and keep them company; but later accounts say the practice is falling into disuse all over Indostan.

are they restrained by law and religion from exercising it? if they are not, why are they allowed the liberty of exercising it in other things? why are they not compelled to follow the same calling, live on the same land, and possess the same property they have received by gift or purchase during their lives, or the duration of said property? are not the reasons for the one as strong as for the other?

We would not, by any means, be understood, by proposing divorce, that we desire to lessen the solemnity of marriage, or weaken the sacredness of the marriage promise in any respect, during their union; but only, that a sincere union of hearts do accompany a union of hands, from which alone, all our other enjoyments, as from a secret source, are derived: as streams flowing from a sweet, clear, and pure fountain, without which every thing is lifeless, insipid and disagreeable; and that in proportion to the disharmony that subsists here, or on the contrary, all is pleasing.

And here we beg leave to communicate our sentiments on marriage in the lines of that elegant and sublime poet, who is said once to have employed his pen in vindicating the same cause we do now.

“ Hail wedded Love, mysterious law, true source
Of human offspring, sole propriety
In Paradise of all things common else.
By thee adult’rous lust was driv’n from men
Among the bestial herds to range; by thee
Founded in reason, loyal, just, and pure,
Relations dear, and all the charities
Of father, son, and brother first were known.
Far be it, that I should write thee sin or blame,
Or think the unbecoming holiest place,
Perpetual fountain of domestic sweets,
Whose bed is undefil’d and chaste pronounc’d,
Present, or past, as saints and patriarchs us’d.
Here love his golden shafts employs, here lights
His constant lamp, and waves his purple wings,
Reigns here and revels; not in the bought smile
Of harlots, loveless, joyless unindear’d,
Casual fruition; nor in court amours,
Mix’d dance, or wanton mask, or midnight ball,
Or ferenate, which the starv’d lover sings
To his proud fair, best quited with disdain.”

But all the arguments hitherto used in favour of divorce to procure matrimonial bliss, will doubtless militate greatly against us with a great number of devout persons, who believe

lieve that the rewards they will receive in another life, will be in proportion to the voluntary punishment they shall receive in this. To such we must freely own that all our wits are exhausted, and arguments are at an end; we can only leave them to enjoy what they take to be their greatest good, and assure them, they will not be envied or molested in their so doing, if they do not molest others in the enjoyment of what they take to be their good.

We beg the Reader's pardon for making one more quotation, from that solemn and much admired poem, Young's Night Thoughts.

“ Pleasure's the mistress of the etherial powers;
 For her contend the rival Gods above;
 Pleasure's the mistress of the world below;
 And well it is for man, that pleasure charms;
 How would all stagnate, but for pleasure's ray!
 How would the frozen stream of action cease!
 What is the pulse of this so busy world?
 The love of pleasure: that through every vein,
 Throws motion, warmth; and shuts out death from life,
 Is nought but virtue to be prais'd, as good?
 Why then is health prefer'd before disease?
 What nature loves is good, without our leave,
 And where no future drawback cries, “ beware”
 Pleasure, tho' not from virtue, should prevail.
 'Tis balm to life and gratitude to heaven;
 How cold our thanks for bounties unenjoyed!
 The love of pleasure is man's elder born,
 Born in his cradle, living to his tomb;
 Wisdom, her younger sister, tho' more grave,
 Was meant to minister, and not to marr,
 Imperial pleasure, queen of human hearts.
 Pleasure came from heaven,
 In aid to reason was the Goddess sent;
 To call up all its strength by such a charm.
 Pleasure, first succours virtue, in return,
 Virtue gives pleasure an eternal reign.
 What but the pleasure of food, friendship, faith,
 Supports life; natural, civil and divine?
 'Tis from the pleasure of repast we live;
 'Tis from the pleasure of applause we please;
 'Tis from the pleasure of belief we pray.
 All prayer would cease if unbeliev'd the prize.
 It serves ourselves, our species, and our God;
 And to serve more, is past the sphere of man.

Glide;

Glide, then, forever, pleasure's sacred stream!
Thro' Eden as Euphrates ran it runs,
And fosters ev'ry growth of happy life;
Makes a new Eden where it flows."

The above must be understood to mean virtuous pleasure; in common occurrences and occasions of life, as well as those of religion; and if such are its salutary effects, what must be the effect of the contrary, I leave the Reader to judge, by attending to his own feelings in some unhappy moments he may have experienced.

We believe it will be readily admitted, that there is no portion of the lives of mankind so extremely pleasant; as when about to take possession of a lovely and agreeable companion: except the enjoyment they may receive afterward, in finding their expectations fully satisfied: until some untoward circumstance, incident, or misfortune puts an end to their felicity. And yet this blessing, according to our present practice, can never be enjoyed by one of the parties, but once in a life-time. And if their joys should chance to be short, all the rest is little better than distraction. In vain will they strive to find them again in wealth, honours, or promotion; they may kindle the fires of hell, and ransack nations, or destroy neighbours, according to their respective situations and capacities in life, yet they will still meet with nothing but disappointment in their enjoyments. Or if there is any thing in this world, that would excite virtuous and amiable dispositions in men and women, it is the thought and ambition of recommending themselves to virtuous and amiable companions; more especially when in distress with one that is otherwise. The expectation of such good fortune if it should never happen, would make them incline more to good, virtuous, and worthy actions than otherwise they would do.

If divorce was declared not only lawful by the legislature, but honourable by the ministers and elders of religious bodies, (without which, the law would not have its full effect) it would probably remove one of the most melancholy misfortunes of the human being—suicide.* For certainly it is a most odious reproach

* We may observe, our Creator in framing the passions of the human soul, has wisely preserved a balance between our private and public affections; in order to secure the duty we owe to others as well as ourselves; for where there is a strong propensity to private affection, there is one equally strong to the public—a love of reputation. And when a strong private affection, no way interfering with the good of the public, is rendered infamous by means of law and religion; then the soul is exceedingly agitated by different impulses; and strongly impelled different

proach to the rulers of any people, to see their subjects go distracted and destroy themselves on account of their misgovernment, or misfortunes that might easily be removed.

Cruel men and women would then be afraid to misuse and abuse their good, worthy partners, whom they know to be better than themselves; but would be induced to act the lover instead of acting the tyrant.

It would probably prevent fraud and deception in courtship. It would tend greatly to industry, as men and women would exert themselves much more to support those they loved, than those they did not; this is plain in the change we often see in young people, for the better or worse after marriage.

Parents might not then forever lament the loss of an only son, or an only daughter, by an imprudent, precipitate marriage. Many bachelors might not then remain so long unmarried, and disgrace religion and mankind with their vices. Many young women would then become virtuous wives and mothers; comfortable to their friends, useful and ornamental to society, who, as circumstances are at present, do frequently bring disgrace upon themselves and their sex, and a burden on others. And we believe the like of these would not so often be forsaken by those who have deceived them, if the ideas of perpetual bondage did not intimidate them. Every plea whatever for unlawful commerce between the sexes would then be taken away. If reasonable liberty of parting was given, the desire of it would be frequently removed. Continual enmity and ill-will between the relatives of the respective parties disagreeing in marriage would cease. It would inculcate more friendly and beneficent ideas of the wisdom and goodness of Divine Providence in the disposition of human affairs, and dispose mankind more sincerely to reverence and adore the great Author of their being.

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different ways and grievously tormented. And if the sensation is violent it will occasion involuntary watching or waking, and when this is the case, body and mind reciprocally act as a stimulus upon each other, encreasing their sensations; until the soul, inflamed with furious impatience, instantly bursts the strongest bands and bounds of nature, and flings herself into the ocean of spirits from whence she sprang. And the disaster speaks aloud to the world, in the most pointed, explicit language, that may not be mistaken; that the laws of men have perverted the laws of Providence, and these catastrophies are as beacons set upon a hill that cannot be hid, to warn foreigners and all others of the danger of breathing the tainted air of such a soil: for although the body may escape destruction the soul or mind may not, if we may presume the same causes to have the same effect, on the same kind of beings; and we believe if the number of these in this country, were strictly taken and made public, they would greatly exceed what can easily be imagined.

If the number of objects that wish for a change are but few, their liberty can do no harm; if many, they ought to be the more regarded, and attention paid to their situations.

The offspring of happy matches would be, by nature as well as by education and example, less viciously inclined. For we believe the qualities and dispositions that are contracted by habit, are propagated afterwards by generation, as is visible in the wildness and tameness of young animals from their respective parents: also in the ferocity and docility of those persons descended from free or enslaved nations: likewise the uncivilized nature of young savages, longing to live the same sort of life of their parents, although otherwise educated.

Perhaps it might be a step towards restoring the golden age so much desired, for certainly those countries approach the nearest to it where there are no wars, but where agriculture and population are in their highest perfection, as in China, where their customs are very different from ours in this respect.

Perhaps none would oppose this alteration but those who were conscious of having companions better than themselves, and who might be apprehensive such would become dissatisfied with their situation.

No distinction of preference in favour of either sex ought to be made when nature has made none.

Thus, free citizens of America, we have briefly and without any ornament of style, represented to you such of the many truths, relative to our situation in respect to marriage, as must strike the apprehension of the most indifferent observer. It would be doing injustice to your humanity and feelings, as men and as Christians, to suppose you will not take the subject under your serious consideration, and communicate your sentiments to each other; and finally propose such alterations and amendments in the laws and customs of our country, as will tend to the benefit of those unhappy individuals who have never wilfully, in this respect, transgressed the laws of God or man; or, done any thing to incur your resentment or displeasure, and whose infelicity calls yet louder for relief than their failings call for censure; and that you will not let other matters so much engross your care and attention, that you cannot sympathize with, and feel for, the afflictions and distresses of such of your worthy fellow-citizens, who are united to you by the strongest ties of affinity and affection, and also as neighbours, friends, and members of the same community with yourselves; neither suffer them to remain under that contempt and disregard that ever is the lot

lot of the unfortunate; nor let ignorance, bigotry and superstition, any longer govern your understanding, by suffering one doubtful text of scripture (which is evidently misunderstood) a means of destroying the happiness of multitudes, without a prospect of redress, for endless generations; therefore, we trust, that you will generously show an example of liberality and wisdom to the rest of the Christian nations, by immediately setting at liberty all those who suffer under the severe restrictions of cruel, tormenting partners; which would make them valuable and worthy members of society; a comfort to themselves and their friends, and an ornament to human nature; and by so doing you will doubtless receive the grateful thanks of such, and the honour and approbation of all good men.

We shall now conclude, with addressing a few words to those on whose behalf we have been writing this essay.

O ye unhappy people, unto whom the bands of wedlock has entailed wretchedness instead of joy! Perhaps your situations may be without remedy; it is so, doubtless, without you seek it, which it is your duty to do both for yourselves and for posterity. But it is not without hope if you exert yourselves according to your ability; be not ashamed of your situation; it is your misfortune and not your fault; either of you might have been completely blest and happy with another partner, had it been your good fortune to have united with one suitable to your disposition and circumstances: but it is never too late to try to be revenged on fortune. Let your situation in life be what it may, your circumstances high or low, if you can but be thoroughly reconciled to those who where once your fond choice, and renew the days of courtship and felicity you once felt, not only by avoiding every thing that is found to be disagreeable to your spouses, but also exerting yourselves in every thing that is servicable, generous, kind and freindly; you will then be revenged on fortune, and heaven will have blessings yet in store. But if this is not practicable, as is most commonly the case, apply decently to the legislature for redress, to pass such laws for your relief, and others in the like situation, as they shall think necessary and proper; they certainly cannot refuse so reasonable a requisition who have granted relief to a less respectable class of mankind, without request, in a less painful situation. But nevertheless, as sudden innovations from customs long established in any country, are not easily obtained, more especially where it is a part of the established religion of the people. Those of some rank and character in the world, who shall have virtue and resolution enough, to set some exam-
ples

ples of separating and marrying again, great part of mankind would be more indebted to them for their liberty and happiness, than unto those who delivered this country from British oppression. For their virtuous courage, resolution and magnanimity, would break the way for others to follow; and a law would at last be obtained in their favour. Thus we see the first advocate for the liberty of slaves in America, Benjamin Lay,* a worthy and good man, gave away great part of his substance, when in Jamaica, to relieve them; and wrote and testified, in all places, violently against the practice of slave-keeping: and, when in America, would sometimes enter meeting-houses, and sprinkle blood upon the people, and tell them the blood of the slaves was in like manner upon their heads, if they did not repent and free their slaves.

It was by such remarkable exertions as these, that almost every sect in religion has been established, without which the attention of mankind are not roused or excited, but every thing goes on in its former course, and glides down the stream of time unnoticed; and the misfortunes of a few are unregarded and unrelieved; or, according to the expression of a poet, on another occasion,

“Unrespited, unpitied, unreprieved ages of hopeless end.”

* Succeeding writers have ungenerously passed over this worthy person's name in silence, and given the honour of the testimony to those people who excommunicated him from their society, for this very conduct. See his own writings.

In the Matter of the Application of EMILIE L. FRY to be divorced
from HORACE B. FRY.

SPEECHES

OF

WM. L. HIRST, Esq., and Hon. THOS. CORWIN,

ON BEHALF OF

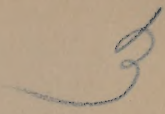
MRS. EMILIE L. FRY,

BEFORE THE

COMMITTEE ON DIVORCES OF THE HOUSE OF REPRESENTATIVES

OF THE

STATE OF PENNSYLVANIA.



REMARKS

OF

W. L. HIRST, Esq.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE:

It has been my lot, during a long and arduous practice, to be concerned in many an interesting cause, but, I think I can say, in no cause more interesting than this. We are before you—my learned friend and colleague on my right, (D. Webster, Esq.,) and my learned and distinguished colleague, (Hon. Thomas Corwin,) on my left—to plead the cause of a young lady, before the Legislature of her native State. She has presented to you a memorial, the truth of which I propose to show, asking that she may be liberated from a contract of marriage, of which I may use the expression, that the ink of its record is scarcely dry. After an experience in married life of scarcely more than a month, she and her husband agree only upon one thing: that they never will live together again. On that point they cordially concur.

There are two views of this matter to be discussed before you, gentlemen: one in reference to the law of the case, and the other in reference to the facts—and acting upon the suggestion which fell from

the Chair, to economize time, I will proceed immediately to the consideration of them.

We have been told that the Legislature has no power to act; that the supreme legislative authority of this Commonwealth is unable to afford relief in a case like the present; that the Constitution has disabled you, and that relief, if sought and obtained at all, must be sought and obtained in a Court of Justice. I will proceed to show you that there is nothing in that argument. I will next offer some observations upon the facts of the case for the purpose of giving to you their real character, and enabling you to deduce from them a truthful result.

The right of the Legislature in England, and in this State, prior to the late Constitution, to annul the contract of marriage, has never been questioned. In any and in every case it has always been admitted to be supreme. But for the Constitution of 1838, the power of our Legislature to grant divorces would be unquestionable in all cases whatsoever.

The Legislature exercises this authority, and in proper cases they have exercised it repeatedly, every session since the Constitution of 1838, for the reason that although a marriage is a civil contract, and so regarded by the laws of the land, yet it is a contract of that peculiar nature that affects the social happiness of the community; not only the happiness of the parties directly interested, but the community at large. This is one ground upon which this authority is exercised. You are aware that the Constitution of the United States forbids you to pass a law impairing the obligation of a contract. Marriage is a contract, and yet the Legislature can put an end to it. While in every other case of contract in which the Legislature has exceeded its constitutional authority, and the Courts have annulled its action, in this respect no one has doubted its authority.

So, also, where there has been any breach of the contract on the part of one of the parties, or both, not cognisable in the Courts, and where it clearly appears that the continuance of the contract would be injurious to the parties, destructive of their happiness, and prejudicial to the interests of the community, it is the right, and it becomes the duty of the Legislature, to extend relief.

The 14th Section of the 1st Article of the Constitution of 1838

provides, that "the Legislature shall not have power to enact laws annulling the contract of marriage in any case where, by law, the Courts of this Commonwealth are, or may hereafter, be empowered to decree a divorce."

The occasion that gave rise to this constitutional clause was stated to me this morning by a member of the Senate. It was the case of an individual who was divorced from her husband while travelling in a foreign country, without notice and without cause.

Although the Act of 1815 gives the Courts power to grant relief in a case where the husband, by cruel and barbarous treatment, *endangers the wife's life*, or offers such indignities to her person as to render her condition intolerable and life burdensome, *and thereby* force her to withdraw from his house and family, yet this case cannot be heard in the Courts, because the same law requires that, before the Courts can take jurisdiction of it, the wife must take an oath either that her life is in danger, or that she was, for the latter reason assigned in the Act, forced to withdraw from the house of the husband. According to the memorial of Mrs. H. B. Fry, which you have all perused, she has stated, upon oath, that she cannot make an affidavit to the effect required by the law. She states that she does not consider her life in danger, and that she withdrew from her husband's house because his demand required of her to submit to his will that they should seem to the world to live together as man and wife, under the same roof, and yet, in reality, be strangers to each other.

Before a Court can take jurisdiction of the subject-matter of a complaint, the libellant is compelled to make an oath which appeals to her feelings, to her sense of personal security, to her conscience, as to the nature and effect of the threats and conduct of her husband; and until she does make that oath, which is so addressed to her feelings, her conviction and her conscience, the Court can have no jurisdiction. She has said to you, in the most solemn manner, that, for the reasons given in her petition, she cannot make such an oath. It would be false. I need not say to you, gentlemen of the Committee, that having made such an oath before you, at the foot of her memorial, it would be a violation of every sense of common decency and propriety on her part, to go into a Court of Common Pleas, and make an oath directly the reverse — thus convicting herself of what her hus-

band has endeavored to convict her several times—of perjury. The case, therefore, for the reasons stated, can never have place in a Court of Justice. Were she to enter a Court, swearing entirely the reverse of the averments which she has already made, no Court would hesitate to dismiss her application.

There is another view of this case, according to which the power of the Legislature to grant relief, seems to me to be unquestionable. It is clear of all constitutional objection. There are no parties here. This is not a Court. There is no plaintiff; there is no defendant. You are bound by no technical rules. You have the whole subject matter of the marriage contract and the married life of these parties before you. Of the facts you will decide as to you seem meet. If you find any reasons whatever, set forth in the petition of Mrs. Emily L. Fry, or set forth in the multitude of answers of Horace B. Fry, which appeal to your judgment and consciences as a case in which it is your duty to separate them by an Act of Divorce, you will do it. Upon this point, gentlemen, you can have no doubt. Mr. Fry has publicly repudiated his wife. He has put upon the records of this House a memorial that will last as long and longer than she lives, accusing his wife of infidelity, perjury, and of a series of acts, which would make it a public scandal to continue them longer in the condition of husband and wife. He has represented her to be a woman without virtue, addicted to habits of a character that I shudder to repeat, a woman so odious in his sight, that I must express my astonishment that he has not joined her in imploring you to dissolve the connection which he says disgraces him. Upon this ground, disconnected with the one that this case cannot be judicially decided, it seems to me to be the duty of the Legislature to dissolve this union. It is a matter, gentlemen, utterly immaterial whether the husband, or the wife, has introduced this proceeding, because there are no parties here, there is no suit to be dismissed, there is no party to be put out of Court, both are before you, the subject is with you for decision, and no matter who is wrong or who is right, or whether both be wrong, I do not think that there is a gentleman whom I now address but will say that this connection ought to be dissolved.

You have in the answer of Mr. Fry, a hearty concurrence on the subject of a divorce. He says himself that he means to apply for it

some eighteen months hence. He avows in terms that no one can misunderstand, that his connection with his wife is forever dissolved. But he desires to hold this lady in a condition of which it would be painful to speak, for eighteen months; until it pleases him to apply for a divorce, upon the ground of desertion. It is only, therefore, a question of time between the parties, the wife desiring it immediately, and the husband desiring it at a period in the future; both anxious, determined and resolute never to cohabit together again, and each resolved on a separation at the first opportunity, the wife by legislative aid, the husband by judicial aid, without any more delay than the nature of the case requires.

Upon this subject we have had but one decision in our Supreme Court. If you will, gentlemen of the Committee, take up the second volume of Jones' Reports, and turn to the case of Jones against Jones, page 350, you will find the only case adjudicated under the recent Constitution. In that case the Act of Assembly was declared unconstitutional. I have no doubt many gentlemen of the Committee remember it. It was a Montgomery county case. A Mrs. Jones applied to the Court of Common Pleas of that county, asking to be divorced from the bonds of matrimony, alleging cruel and barbarous treatment.

Her affidavit at the foot of her petition was in the usual legal form. The Court having jurisdiction, the cause was tried and a verdict given against her. Her counsel, who was then a Senator from that county, drew up a bill, which passed both Houses, divorcing the parties, and neither in its preamble nor the enacting section did it set forth any cause of divorce. In that case the Court said that it was lawful to go behind the Act of Assembly for the purpose of ascertaining whether the Legislature had jurisdiction, and they held, that where a cause had been tried by the Courts, and precisely the same reasons stated in the memorial to the Legislature, that that body had no jurisdiction, and the Act was unconstitutional. But they said that an Act of the Legislature would be constitutional if it were passed "for any non-enumerated cause in the Constitution,—in other words, if not for any of the causes over which the Court had jurisdiction." And further, "that if the Legislature had specified in the Act, or by a preamble, that the divorce was granted for a cause where the court had no power,

a very different case would be presented. But they have not said it."

If, therefore, gentlemen of the Committee, you resolve to report a bill which in its preamble or enacting clause sets forth any cause of divorce not cognizable in the Courts, and it should pass into a law, it will be valid. But, if any doubt exists, which is the proper forum to decide this question,—if an Act be passed, and it be an invasion of the judicial power of this Commonwealth, is not the judicial power able to protect and vindicate itself? Can it not decide, upon an appeal to it, whether you have intrenched upon its jurisdiction or not? It is a question upon which we think there is no doubt; but if there be, which is the proper place to resolve it? Why not refer it to the judicial tribunals? You are all aware of the familiar rule of construction upon these constitutional questions; it is in favor of the legislative power. The Courts will go to the very verge in sustaining that power, against any constitutional provision or limitation, if there be a doubt as to the construction of the Constitution itself. This was exemplified in the case of the sale to the Sunbury and Erie Railroad Company of the remnant of the State works. There was a provision of the Constitution which looked very much indeed as if it disfavored such a sale in the mode and manner prescribed by the law. But the Court sustained the Act of Assembly, and held the sale valid. The rule by which it was sustained was as old and older than the Constitution; it favors the legislative power unless in cases where an undoubted mandate of the Constitution prohibits the exercise of it. This has never been disputed, and until it can be shown clearly and undoubtedly, that an imperative provision of the Constitution stands in the way, an Act of the Legislature will be vindicated, as a fair, proper and legal exercise of the legislative power.

I now come to the facts of this case. It is a painful subject in any light. We appear in behalf of a young lady—she might almost be called a child—who was received from the arms of her father on her eighteenth birthday by Mr. Fry. Her father, with the natural affection which he had exhibited not only to her, but to the other members of his family, had made ample provision for her future comfort. He had purchased a mansion for the residence of herself and husband, which cost him some thirty thousand dollars; he had furnished it at

a cost of nearly ten thousand dollars more. He had settled upon her married sister six thousand dollars a year, and it was not likely that he would discriminate against his youngest and last daughter, who was all that was left to him except one single child, a son. The bride and groom started on a bridal tour to West Point, apparently in happiness. During their sojourn there their friends at home were led to believe, by letters from Mr. Fry, that that happiness continued unalloyed, and that it would continue during both their lives. A very few days elapsed, and we find the daughter back again under her father's roof, and now she appears before you an applicant for the divorce for which she prays. Her petition sets forth several acts upon the part of her husband of a character so extraordinary, and, if I convince you of their truth, so intemperate that no *man*—I use the word in its full sense—no man could hesitate for one moment to give her the relief, the little relief that she asks. It is not much, but it is all you have it in your power to grant to her. She says, that while the bridal party was leaving the wharf, a few hours after the marriage, Mr. Fry first exhibited temper; that when they arrived at New York, on the occasion of their starting for West Point, he exhibited temper again; that at West Point, soon after they arrived there, he began to use violent language, succeeded by violent action, such as throwing her from her chair; throwing a chair at her; searching his trunk for a pistol to shoot her;—and that when she told him she would write to her parents for protection, he threatened to intercept her letters, and write such a communication to them as would entirely change their opinion. That, when she returned to town, he again threatened her with violence, and that this course of conduct continued until, finally, he proposed to live as if they were not married—seeming to be married without being married—living in a state of apparent matrimony under the same roof; when she left his residence altogether. This is the picture of a short married life, as presented by the wife. What does the husband say? I beg your particular attention to it, gentlemen. He says that within a few days after they were married, before they reached West Point, she exhibited a trait of character which she had carefully concealed during their engagement; that before the end of a week she became indifferent and cold, and that before the end of a fortnight her conduct became repellant and insulting. These are the pic-

tures presented by the two parties. Now, gentlemen, at the time Mr. Fry asserts that his wife's conduct is cold, repellant and insulting, let me read you what he writes to her parents. Mr. Fry says to Mr. John Grigg, August 5th:

"MY DEAR SIR:—I have nothing particular to chronicle, beyond a continuance, without interruption, of the pleasure we started with.

"I hope that Mrs. Grigg and yourself will not find Emily's absence a bar to your enjoyment of life, but will consider as a set-off for the gap in your house, the fact that the short distance in life's journey that she has gone with me, has thus far been perfectly happy, and the promise of its continuance is more favorable than is usually found. I thought to-day that the saying, 'the time during which a young lady is engaged to be married is spent in wearing a mask,' did Emily great injustice."

And yet he tells you that within the first week he discovered that she had artfully concealed, during her engagement, a trait of character which bade fair to make them miserable. I will now call your attention to Mr. Fry's letter of August 14th, to Mr. Grigg:

"MY DEAR SIR:—I write to-day more with a view of keeping you apprised of our health and happiness," &c.

"We keep jogging on in the same routine of pleasure and idleness."

And the letter from Mr. Fry to Mr. John W. Grigg, dated August 14:

"MY DEAR SIR:—Your father and mother may have informed you of the particulars of our wedding, which I believe to all present was a very happy one, and I have since then nothing to record but a continuance of the happiness then commenced, which bids fair to continue in undiminished amount for Emily's and my life."

I will show you, gentlemen, directly, when I reach Mr. Fry's answer, that at the very time he here speaks of nothing but happiness, he there speaks of his wife as a public scandal, a reproach to himself, and

as having pursued a course of conduct which was disgraceful to both. You will also find, by looking at her allegations in the petition, that Mr. Fry told her if she wrote to her father he would write letters to him contradicting her. I leave it to you, gentlemen, to imagine whether these letters were written with that intent and purpose.

I have given you in brief a statement of Mrs. Fry's complaints. I now call your attention to the issue framed between her and her husband by his answer. I find it distinctly written here that Mr. Fry states, as the issue between himself and wife, that her charges of misconduct on his part, are romances, invented by her afterwards, as a necessity to a baseless cause—that is, after the separation. This is the issue voluntarily placed before you by Mr. Fry. He charges distinctly that every word she has uttered in her memorial, and sworn to, is a flat perjury and utterly untrue. Let me see if I can find corroboration for her statements, and if I can show you that her complaints actually existed at the very time to which they refer;—and if I do so by a witness who is introduced to you here with a recommendation from Mr. Fry's particular friend, Mr. Charles Williams, I hope it will tend to create a different impression on your minds.

Before I introduce to you Mr. Wagner of West Point, I would read you his character as depicted by Mr. Williams, the chosen friend of Mr. H. B. Fry, by whom he was sent to West Point. I crave your particular attention to this, because if I show that these complaints of Mrs. Fry are not, as alleged by Mr. Fry in his answer, mere inventions and perjured concoctions of an unscrupulous woman's brain, gotten up a month after the occurrences; but that they existed substantially at the time to which she refers, then I put at rest the issue raised by him beyond the possibility of a doubt. Before giving you Mr. Wagner's testimony, I will read you what Mr. Williams says, in a letter addressed to Mr. Wagner, after his return from West Point:

“Not one word did you tell but what I believed then, as I do now, and I unhesitatingly declare that I believe ALL YOUR INTERCOURSE WITH HER, as with me, to be that of A HIGH-MINDED, UPRIGHT GENTLEMAN, though wrong and indiscreet as you admitted in writing the letter you did.”

I will now refer to the written testimony of Mr. Wagner, who writes that which he had spoken to Mr. Williams, and which Mr. Williams states that he believed then and still believes.

What does Mr. Wagner say? You have observed, gentlemen, the issue raised by Mr. Fry himself, and which he cannot escape from nor elude. He has deliberately placed it before you, and now I propose to show you that at West Point, while the parties were residing there, these very statements which Mrs. Fry has detailed in her memorial, she also made the day after they happened to Mr. Wagner.

I beg your particular attention to this letter of Mr. Wagner. It bears upon its face a truthful and spontaneous statement of facts, by a gentleman who receives an education at an institution where honor is among the first branches taught, and the principles of the highest morality strictly enjoined.

“About the beginning of the month of August, 1858, I was introduced to Mrs. Horace B. Fry by a mutual friend, and a few minutes afterward by him (Mr. Fry) to his wife. A few days afterward I called upon Mr. Fry at the hotel where he was then staying, and had with him a conversation, during which the ladies accompanying him were referred to, and he remarked that he would be most happy to have me better acquainted with them, and to have me show them as much attention as I could. I did not meet these ladies during this visit, as I had not time to wait on them. Some days afterward I met them, and from this time our acquaintance gradually progressed. During its continuance I visited Mrs. Fry at the hotel frequently, accompanied her to the Cadet ‘Hops,’ and occasionally walked with her. Mr. Fry always seemed pleased to meet me, and never made the least objection to my attentions to his wife. I met him more frequently alone than otherwise, as he was seldom in the parlors of the hotel during the time at which we were allowed to visit there.

“I met Mrs. Fry generally when there were a number of persons around us, and cannot remember being with her a single time at which we might be entirely free from observation. I do most solemnly avow that all my personal intercourse with her was such as might freely occur between a gentleman and a lady, and was governed by principles of friendship and honor. There never was a single indelicate word,

thought, or allusion exchanged by us, and our conversation was generally upon those topics about which intelligent persons are accustomed to speak."

You will observe, as my colleague has just reminded me, that in Mr. Fry's answer to Mr. Grigg's memorial in which this letter is copied, that he does not controvert these facts, nor any of them. He was daily in the habit of seeing Mr. Wagner; he was more frequently alone with him than in the presence of others, never objecting to his visits to his wife, or his attentions to her, and yet, if Mr. Fry was so dubious of his wife's chastity and purity, would he not have met him with different feelings and accosted him in a different manner? I hold it to be impossible that he could thus see, and meet, and converse with Mr. Wagner under these circumstances, if what he has since put upon the records of this House be true. I will show you directly where Mr. Fry asserts that at this particular time he was goaded to frenzy by the conduct of his wife. Yet he meets Mr. Wagner continually, speaks with him continually, never "makes the least objection" to his visits, does not show the slightest dissatisfaction with them. Circumstances have occurred recently in which these feelings of injury became so violent as even to lead to the sacrifice of the life of the offender.

I come now to the corroboration of the facts which Mrs. H. B. Fry sets forth, and I will thus disprove the charge framed by Mr. Fry against his wife—that her complaints are mere romances, as he alleges, invented after the separation. Mr. Wagner says:

"After I had known Mrs. Fry for some time, I asked her why it was that she so frequently looked sad and troubled. After some hesitation she told me that herself and Mr. Fry did not agree well together; that he frequently treated her harshly, and vented his temper upon her; that she found it impossible to please him, for when she agreed to any thing, he immediately changed his mind in reference to it; that he several times told her that she should be thankful to him for having raised her to the high position that she would occupy in society as his wife; that she had not been accustomed to good society, and that he would show her what good society was."

"On one occasion after this, she told me that the night before, Mr. Fry had thrown her from the chair on which she had been sitting. She once told me that Mr. Fry wished her to go with him to visit his brother, but that she did not feel well enough to go."

On one occasion, the next morning after Mr. H. B. Fry had expected to go down the river to see Mr. Fry's brother, which information she communicated to Mr. Wagner, he expressed his surprise at seeing her, and asked her how it happened that she did not go, and yet Mr. Fry raises the issue that these things are inventions gotten up for the occasion, after the separation took place. I hold this corroboration to be conclusive and irresistible. It is vouched by a gentleman of perfect credibility, and there is no good reason to doubt his veracity, as it comes endorsed to you by Mr. Williams. It is a corroboration so strong, that it is impossible for you to resist the conclusion that these things took place at the very time, as Mrs. Fry states. Mr. Wagner goes on to say, "One morning she told me that the evening before, after returning from a 'hop,' Mr. Fry had locked the door when she came in and had threatened to shoot her, and that he did go to his trunk for his pistols, but that he did not take them out. I asked her if she was not afraid that he would really do so some time? She said that she did not believe he would dare to do it. She also told me that he swore at her most terribly."

"One morning I met Mr. Fry alone at guard mounting, and I made the usual inquiries after the health of the ladies. He told me that Mrs. Fry was not well; that she had had a hemorrhage of the lungs the evening before."

It seems, then, that Mr. Fry himself told Mr. Wagner that his wife had a hemorrhage of the lungs the evening before, which his wife swears was caused by his conduct to her. And yet Mr. Fry, in his memorial to you, says that the hemorrhage of the lungs was a mere falsehood, a romance, invented by his wife.

Mr. Wagner again says:

"When I met the lady again I asked her about her illness, and she told me that Mr. Fry had been so violent as to excite her excessively and to bring on a hemorrhage."

"All this, as told to me from time to time, excited my sympathy, and I endeavored to console and advise the lady. She seemed to be anxious to be separated from Mr. Fry, and I endeavored to explain to her how unfortunate and unpleasant her position would be in such a case. She said she could not possibly be more unhappy than she was. I advised her not to act without the consent of her parents, and she told me that she would appeal to you. She afterwards told me that Mr. Fry said that if she wrote to her father, he would take care that he should get a very different story from hers. On another occasion she told me that he had proposed a divorce, and had told her that he would speak to his lawyer as soon as he went home."

This, also, she states in her memorial to you. This is another corroboration among the rest, and vouched for in such a way that you cannot discredit it. Mr. Wagner goes on to say :

"After Mrs. Fry's return home, I received from her a letter, the contents of which were simply a statement that the relations between Mr. Fry and herself were unchanged ; that he still acted as before, and that he had laughed at the idea of fulfilling his promise about the divorce, and that she had told her mother all about the affair."

You see, then, that she reveals her wrongs to her mother. She confides in her, and tells her the same sad story, as soon as she arrives. You are here again called upon, gentlemen, to decide between Mr. Fry and his wife, as to the fact, whether her complaints are after-thoughts, gotten up for the purposes of this proceeding.

I call your attention to the letter of Mr. Wagner to Mrs. Fry, because Mr. Fry has described it as a long love-letter—that long love-letter, beginning "My dearest Emily," and ending "confide in me." I am going to show you, gentlemen, what that letter did contain; Mr. Wagner proceeds :

"This letter I answered, and in my answer I renewed my advice that she should rely solely upon her parents, and be guided entirely by them."

That was not a long love-letter. It did not say "confide in me." It said confide in your parents. Here the gentleman who wrote the letter gives to you, under the sanction of his name, the contents of that letter. Mr. Wagner continues: "About the same time I received a letter which merely gave an account of another difficulty with her husband. I threw it away." This confirms her statement that the difficulties continued after their arrival in Philadelphia.

Before I proceed to the visit of Mr. Williams at West Point, I want to call your attention to a particularly interesting omission of Mr. Fry in his answers presented to this body. You will observe that he avows continued kindness to his wife. You will observe that each particular statement which she has given of his improper conduct he alleges to be mere romance, invention and falsehood.

Now let me refer you to what he has himself confessed in his answer:—that on one occasion, at West Point, his temper got so far the command of him that he indulged in such violence towards his wife that he felt himself obliged to beg her pardon afterwards. I will read it to you, and I beg your particular notice to this very important omission, namely: that while he admits violence, he does not tell you what that violence was. Was it driving her from her chair? Was it throwing chairs about? Was it violence of language affecting her purity and dignity? What was it? He says:

"On one occasion, and one only, when her public conduct, tending to bring her character as a wife and a woman into question, had passed all the bounds of a husband's toleration, I remonstrated with her in earnest terms; and while I was conscious, on the one hand of my devoted love for her, and on the other was stung to the heart and exasperated by her cruel indifference; when, with these bitter truths, this unmerited wrong preying on my mind and harrowing my feelings, she attempted to palliate her gross misconduct by telling me that I wished to deprive her of *every* pleasure, then, and then only, I lost my patience at her temerity and falsehood, and expressed myself, I do not, as the sudden passion prompted."

In the second communication, Mr. Fry's reply to Mr. Grigg, he goes still further, and says "goaded to frenzy by this cruel treatment,

and finding all kind and fond remonstrances in vain, I expressed my feelings on one occasion in decided, possibly violent, terms." He admits that this was at West Point, and that he was goaded to frenzy, which I interpret to be a state approaching to madness, partially a maniac. What violence was it that he committed under this state of feeling, and for which he soon after sought pardon of his wife, which he says she granted? What was that violence? On what occasion did it happen?

Yet, gentlemen, strange to say, while he was in this condition of mind, as he has represented himself to you "in a state of frenzy—when the public conduct of his wife tended to bring her character as a wife and a woman into question, and had passed all the bounds of a husband's toleration; in this state of frenzy, at such disgraceful deportment, Mr. Fry meets Mr. Wagner daily; meets him affably and treats him kindly, says nothing to him upon the subject, and writes letters to her family, stating that all is sunshine and peace, and bids fair to continue so to the end of their joint lives. Was it not Mr. Fry's duty to state, in his answer, the occasion to which he referred? Would it not have been more proper and frank for him to have done so? And if her conduct was so public that it was noticed by those with whom she associated—if it was so gross and scandalous as to attract general attention, as to goad him to frenzy—why was there not one human being of that public which was so outraged, to send an affidavit here, showing that his statement is true? Mr. Fry's own conduct disproves it. His continued friendly communication with Mr. Wagner disproves it. It seems to me that for his own sake he would have expressed himself very plainly to him. The fact of his not having done so will convince you that he had no such belief or opinion, as he has avowed in his answer.

I go on further, gentlemen, and I am sorry to be obliged to refer to a subject in which I think Mr. Fry has acted most unpardonably. If there be a pledge of honor which ought to be kept, it is in reference to correspondence, particularly where a lady is concerned. Mr. Williams went to West Point as a friend of Mr. Fry, and received a letter from Mr. Wagner on the express pledge that no possible use should ever be made of the correspondence. It was represented to Mr. Wagner

that this would be the means of settling and harmonizing everything. Hear his own words.

* * * * * “Mr. Charles Williams, accompanied by Mr. P. L. Yorke, both from Philadelphia. These gentlemen presented me with a note of introduction from Mr. Horace B. Fry; and Mr. Williams told me that he came to see me as a friend, not only of Mr. Fry, but also of Mrs. Fry and of yourself, her father; and on behalf of all concerned, he wished to make a proposition to me. He said that Mr. Fry had read my letter, and that he deemed it a criminal correspondence, and that if I did not agree to cease all further communication with the lady in question, and give up whatever mementos, letters, &c., that I had received from her, he would at once proceed to take such legal measures, both civil and military, as would bring about my proper punishment.

“I refused at once to yield to any such proposals. I denied positively the insinuations as to a criminal correspondence with the lady, and refused to be coerced into any such dishonorable agreement. Mr. Williams handed me a paper which appeared to be carefully and formally drawn, and which contained these propositions and insinuations.

“After reading it I again denied most unhesitatingly the inuendos and assertions, and declined being forced into compliance. Mr. Williams then stated that he was certain that there was no intention to force me to do anything; that if the writing seemed to read in that sense, I ought to make some allowance for the excited state of Mr. Fry’s feelings. He told me that the lady’s father, yourself, was desirous that the matter should be arranged in this way, and that the idea was merely to keep an unfortunate matter from the public. He said he was anxious that I should understand him as being entirely honest in his actions, and that he desired me to regard all my communication with him as upon the basis of truth and honor.

“I acknowledged that under the circumstances I would not attempt to have any communication with the lady in opposition to the wishes of her husband, and of you, her father; but that I was by no means inclined to give up the letter which I had received from her. He said there was no reason why I should hesitate to give it to him, as no one

should see it, as he would give it to the lady herself, and that he would explain to her how I felt in reference to it. He said that there was no doubt but that such an arrangement would be satisfactory to all concerned, since all that was desired was that there should be a proper assurance that no trouble should arise, in the future, from this letter; and further, to assure me of this, he said he would forward to me my letter, and that *all copies of it should be destroyed, and that no further use should ever be made of it.*"

Yet, gentlemen of the Committee, you will find, although no copy of the letter is produced to you, Mr. Fry, from memory, gives you his version of the contents of it, describing it as a long love-letter in the one place, and a love-letter in the other. He gives you the beginning and end of it, thereby giving an interpretation of it, which, it seems to me, puts it in the most unfavorable light. You will recollect, however, what Mr. Wagner says about it—that it was a letter advising her to trust and confide in her parents, and to take their advice. This letter, therefore, which was never to be made use of, is incorrectly recollected by Mr. Fry, who publishes as the substance of it, that which has no resemblance to its contents, according to the recollection of its author.

I have gone over the issue of fact between the parties for the purpose of proving, as I trust I have, that the facts set forth in Mrs. Fry's petition are not mere inventions gotten up for the purposes of this application, but that they transpired and were communicated to Mr. Wagner by Mrs. Fry at West Point, to a living witness, at or about the time at which she says they occurred. She not only stated them to Mr. Wagner there, but soon after her return home, communicated the same facts to her parents. You cannot, therefore, credit the terrible accusation of Mr. Fry, that the whole of his wife's complaint is forged and manufactured; the result of subsequent suggestion.

It is true that there are contradictions between her and her husband, and you are to decide who is best entitled to belief. I have read you Mr. Wagner's letter, which corroborates Mrs. Fry in every particular, while Mr. Fry has no corroboration. I do wrong perhaps in saying that Mr. Fry has no corroboration. He is corroborated in one isolated instance. At Walnut street Wharf, says Mrs. Fry, he ex-

hibited temper about the baggage. Mr. Fry has given to you the affidavits of two gentlemen, who say that at the time they reached the Wharf, Mr. Fry was attending to the baggage, and that he afterwards joined them. There were two ladies with Mrs. Fry—Miss Fry and Miss Tracy—who, if they had been examined, might have given a different color to this statement, and thereby tend to corroborate still further the positive statement of Mrs. Fry, under oath, of what actually did take place at the Wharf. It is unsatisfactory, then, to call witnesses who might have arrived after the occurrence did happen, and who did arrive after Mr. Fry had gone to attend to the baggage.

So far, then, gentlemen, I have gone over the facts and averments contained in Mrs. Fry's memorial. I ask you to do the same patiently, and you will find that in every instance where it was possible to corroborate her, she has been corroborated! Remember, I pray you, for the sake of justice, for the sake of charity, what the precise issue is between her and her husband, and in view of the whole facts, and with a knowledge of the dire importance hanging upon this case, decide whether the complaints set forth in her memorial were gotten up after the separation, and for the purposes of this application. With the testimony before you of her contemporaneous statements of her wrongs, freshly after their occurrence, to which I have referred, is there room for doubt, particularly when you couple it with the fact that Mr. Fry, who stands before you in the position of an honorable man, impatient and jealous of a husband's honor, daily extended to Mr. Wagner the hand of friendship, treated him affably, never complaining? Gentlemen, it is an old adage and a true one, that actions speak louder than words, and I would rather, if occupying any one of your positions, rely upon this single circumstance than a denial, no matter how forcible the terms. You will agree with me that there are things we cannot doubt nor disbelieve. No one with the feelings of a man would, when the honor of his wife was at stake, treat the party whom he suspected, kindly and affably.

Let me now call your attention to the epithets which have been applied to Mrs. Fry by her husband. Ponder on them, gentlemen, as I read the painful catalogue of vituperation, and let me ask you if it be consistent with common decency and propriety to apply such terms to a lady whose only request is to be released from one

who states that he hopes "that in due time the Courts of law will grant him a separation."

In his memorials to this Legislature, Mr. Fry, under oath, speaks of her gross misconduct, temerity, falsehood, unbecoming propensities, perjury in every line, her romances invented to palliate animadversions upon her conduct; her offences against her marriage vows; her unfeeling behavior, rendering intimate association with her intolerable; her outrageous, false and wicked slanders, uttered in her petition; her conjugal derelictions; her damaged fame; her reckless conduct; her name shamefully connected; decent respect for public opinion required him to restrain her; her ferocious manner; that she gloated over the pain she inflicted upon him; indulging in another passion; morose, rude, cruel; her reckless passion; the turpitude of her treachery and falsehood; whatever sense of right she might have left; shameful intrigue; disgraceful abandonment; outrages on propriety; public disgrace; degradation of herself; grossest deceit; unlawful attachment; wilfully forfeiting her honor; and following the dictates of her illicit affection.

Mr. Fry, gentlemen of the Committee, is celebrated for writing handsomely. His answers are full of pointed and beautiful sentences. He is, as he told his wife, possessed of splendid classical attainments. That this is all his own composition, I doubt not, and I do most gladly acquit any gentlemen of the bar from writing a paper like this, besmeared with such epithets in reference to a lady, his wife. I doubt whether any gentleman of the bar could be found to do it: but there it is. The composition is beautiful. It shines; but, like an animal, the name of which I will not mention, while it shines it is very disgusting.

Gentlemen, do I understand that Mr. Fry appears at your bar, desiring you to continue his connection with a wife whom he has so characterized? Oh, yes! he asks you to refuse the divorce upon the ground of the letter written to Mr. Wagner which was gotten from the Post Office, no matter how. That letter was written the day after the painful scene so fully described in the papers before you; a scene which he himself stated, lasted from the hour of dinner throughout the evening; a scene of agony: the wife shrieking and fainting from the excitement. Read this letter for yourselves, gentlemen. It was

written in confidence. The writer did not expect that it would ever meet the eyes of the world. If even one single guilty or indelicate thought or word had ever transpired, we would have had a revelation of it there. But there is nothing like it. She writes wildly—she says she must leave the house, the city; she knows not where to go or what to do; she will hire herself as a domestic; she will go abroad as a child's nurse; she will disguise herself; will take an assumed name; she wishes to go to her father's house, but she fears that her husband will pursue her there; she feels that she will be safe nowhere, except hidden from the world. In this deplorable state of agony, misery and despair, this young and wretched widowed bride, who had never known a care, pours out the effusions of a bewildered brain. Judge her harshly, who can!

In conclusion, let me ask you what is desired on the one side and on the other? Both parties are anxious for a divorce—the wife praying for it at your hands, and the husband saying that he is determined to have it as soon as he can obtain it in a Court. It is a mere matter of time, or pride, on Mr. Fry's part.

This young girl—child, I was going to say—requires some protection.

Can she look to her husband as a protector? Will you not allow her to take shelter with her father and mother? Are they not the only protectors she has in this world? Is it asking too much on her account and in her behalf, that she may be allowed to remain where she is; that this connection which has been so miserable and short-lived shall be severed, as it will be; that it may be dissolved, as it must be; that it shall be put an end to, as I humbly submit it ought to be? Why, gentlemen, what will become of her, if you refuse this petition? I have read of a dead body being fastened to a living victim.

It seems to me that the condition of this unfortunate young lady will be as fearful as that, if you do not grant her prayer. You condemn her to be attached to a husband who is not with her, who is not for her, but who is against her, and who is, perhaps, the only enemy she has in the world; who has branded her, who seeks to abase and destroy her; who stands upon this record as her accuser. Will you, upon such a state of facts, fail to give her the relief which she solicits at your hands?

REMARKS

OF

HON. THOMAS CORWIN.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE:

If the learned counsel on the other side, (Mr. Wharton,) who has just addressed you, could say with sincerity, as I have no doubt he did, that he felt some embarrassment arising out of the feelings which the facts of the case had inspired, I trust you will believe me when I express the same embarrassment, and I hope, after being allowed that privilege, that you will indulge me with a word or two personally affecting myself.

I know it is not usual in forensic discussion for counsel to state anything which does not strictly relate to the matter before the Court, and I, therefore, will do no more than remark that my own embarrassment springs from the fact that I am a mere stranger to you, and a participant in a discussion of facts which have come to my knowledge under circumstances of a most painful nature. You may imagine, Mr. Chairman, that something of an extraordinary nature has brought me here. That is true. The person for whom I feel by far the most interest, as connected with this transaction, is the father of this un-

fortunate girl, and now the legal and accepted father-in-law of the gentleman here to-night, (Mr. Fry,) not less unfortunate than his unfortunate wife.

It was my lot to have been acquainted with Mr. Grigg, the father of this child, when we were both, I think, about the age of ten to fourteen or fifteen years. We played together in that early period of our lives—that restless, careless, thoughtless period of human existence—to which men at my time of life are wont to turn with the most dear and cherished remembrances that the human bosom can entertain.

I have known that gentleman, (Mr. Grigg,) more or less, from that time up to this; and during the whole duration of my intercourse with him I have not known an act of his which has not tended to increase the confidence I have always entertained of his perfect integrity, the unbounded generosity of his nature, and above all, of the strong and powerful affection with which he clings to his friends, and as you may all see here, gentlemen, of that undying and unquenchable affection with which he clings to this injured daughter. Learning something very vaguely of the rumors that were afloat regarding the unhappy termination of this marriage, I addressed a letter to my friend, an answer to which brought me a statement pretty much the same as that presented in his memorial to you; and after some correspondence on this subject, I thought it my duty to my earliest and cherished friend to see him. That step, gentlemen, would have been called by many an imprudent one; but it was prompted by certain warm impulses which, I may be pardoned in saying, are habitual to my nature; and that imprudent step led to another, which was to bring me here, not for the purpose of discussing the question at all, about which I am now speaking, but solely with the view to gratify the feeling I had for my old friend's cause—for it has become his—hoping that there might be some happy termination to this unhappy affair. He—I mean the gentleman of whom I have spoken—has prevailed upon me to address to you some few remarks on this subject; and I beg you to understand that I do not wish to acquit myself of what is called “making a speech,” as that ambition long ago died within me, but I shall speak only according to my duty, and confine myself to a few general remarks. And if what I have to say

could be converted into a flash of lightning, I should certainly do it and relieve you of that tedium which surely will come upon you before I have concluded. I do not personally know the gentleman who has just taken his seat, (Mr. Wharton,) but I should suppose he has long been engaged in forensic affairs. It has been forty-two years since I first had the honor of appearing in a Court of Justice. For many years I have been engaged as counsel in various cases, but in my whole life I have never once appeared before a legislative body; and I confess, with my ideas of forensic propriety in judicial Courts, I am somewhat puzzled to know what I dare say, what I ought to say, what facts would be considered as proofs, or what facts now before the committee are proved. Some of the facts alleged on the one side, the gentlemen on the other side meet with a statement that they expect to be able to prove the contrary of them; and so we are able to state that counter affidavits can be produced proving this fact or disproving that. I know not what can be proved. I have only read the papers before you, detailing the particulars of the conjugal relations of these two people, and why the parties have applied to you. These I can comprehend, and to these I wish to address myself.

First of all, gentlemen, it is alleged as a legal proposition, by the counsel on the other side, that you have no jurisdiction in this case. Here again, gentlemen, some little embarrassment must be felt by one very little acquainted with the legislation of your great State of Pennsylvania, when he comes in conflict, in his arguments, with those who have very great familiarity with that legislation, and as you may see in this case, with those who are entitled to the highest respect of the members of their profession. I looked at the Constitution of your State a few days ago, and I found there what I had expected, that the Legislature had granted to the Courts of Pennsylvania certain jurisdiction in cases of this kind, and that that Constitution prohibited the Legislature of the State from acting in any case where the judicial Courts have clear jurisdiction. This constitutional clause proves as clearly as any language can express it, that up to that time the contract of marriage, as it is called, was perfectly and entirely under the control of that omnipotent legislative power which by that Constitution is restricted to particular cases. Had there been nothing in your Constitution, gentlemen, limiting the power of

your Legislature, and transferring that power to the judicial Courts of the State, the proposition of Mr. Hirst, in his opening argument, as to the imperial power of the Legislature on this subject, would be, as he has shown, an axiomatic truth. If the convention that formed your State Constitution had the power to say that this contract might be dissolved for causes specified, and that, only when those causes were specified by Acts of Assembly the Legislature should not grant divorces in any cases, why, gentlemen, it clearly proves that the Legislature, in all other cases, has omnipotent power over this contract of marriage, notwithstanding what the gentleman on the other side (Mr. Wharton) says, and that they can divorce any parties who enter into this contract of marriage; in other words, although marriage is a contract sanctioned by the Legislature of your Commonwealth, it is a contract which may be abrogated, in any way consistent with the opinions of the people who formed your organic institutions. A Constitution, provided by a convention of the people of Pennsylvania, legitimately established, can enact that the marriage contract shall not be entered into at all.

I have always supposed that society, acting in its original, unburdened power, may say that nobody shall be married; they may say that—may they not? Unquestionably they may. The unlimited power which man has over his own destiny, so far as the institutions of society are concerned, authorizes him to play any fantastic tricks. I have supposed that all know this. The hand-books of history inform us that in the ancient societies of the old world the people were not allowed to exercise many of the powers that we now possess. If history be true, in the days of the celebrated conqueror of Babylon, a man was not supposed to be of age until he was forty years old. So again, in your institutions, a female, by the laws of Pennsylvania, is not capable of making a contract until she is twenty-one. By the laws of Ohio, of which State I have the honor to be a very humble citizen, a female is of age at eighteen years—unhappily so. I think I would give my influence towards restraining a woman from taking upon herself an obligation so important as that of marriage, by exercising the restraint of parental control until she should attain the age of twenty-one. And, gentlemen, if there should be anything wanting to show what ought to be adopted as a general rule of society,

this unfortunate case would show it. It is, therefore, a proposition not to be controverted, however the gentleman on the other side (Mr. Wharton) might point us to some evils that might divert us from it, that the legislative authority over the marriage contract in all cases outside of the constitutional restriction, is omnipotent. If your Constitution had left it untouched, the Legislature of your State would possess uncontrolled power over the subject. The general presumption is that the members of the Legislature are competent to perform their duties; but if this is a proposition to be disputed it will have to be done in some other place than this, and by some one else than myself.

I speak of this only as a question of power, arising whenever a similar bill is submitted, and I presume it may always be safely submitted to the forum to which this is presented. It is to be presumed, therefore, that you have every authority on this head which is not limited or taken away by the Constitution.

In the law of 1815 there is a provision granting to the Courts, for certain causes there specified, jurisdiction in cases of divorce. Gentlemen, I will not prolong the time of this discussion by reading to you this law, but the substance of it is that, whenever certain facts are proved, the Court may dissolve the bonds of matrimony.

Now what is the proposition before you? It is alleged that the cruel treatment of Mr. Fry towards his wife—as his conduct is shown in her petition—if proved in a Court of Justice, would enable a Court to grant a divorce. I agree that under the law which was enacted in 1815, the cruel treatment and various other phrases used there might be construed to mean exactly what Mrs. Fry has set forth in her petition; but, gentlemen, whilst I admit that, a regard for the requirements of your Constitution compels me to say that you are authorized to grant a divorce in every case where such cruel treatment fails to produce the effect contemplated by that Act—in other words, that your power is not taken away, except as regards that law of 1815—the Constitution does not say that for all those *causes* of divorce which have been assigned to the jurisdiction of the Courts the Legislature shall not act, but it is limited to *cases* of divorce.

If the Courts could take jurisdiction in this case, and act upon it, then, gentlemen, I take it for granted that you could have nothing to do with it. But if you believe that this case, as presented to you,

could not be acted upon according to the meaning of those laws in a Court of Justice, then I hold that you are authorized to act upon it yourselves. Now what is the case presented to you? If two years had elapsed since this unhappy transaction took place, it may be that the desertion of Mrs. Fry, if without any cause accounted for, would enable her husband to obtain a divorce. But if on the other hand, the application for a divorce should be made by her without the requisite affidavit, why of course the Court would refuse it. But here are a man and woman coming before you, both declaring that they cannot and will not live together in the conjugal relation of man and wife. And now the question is whether, this case going before a judicial Court, that Court would be enabled to act upon it. Unquestionably it would not. Take another view of the case. You find two people unfortunately and unhappily married, both of them declaring that the marriage relation is forever dissolved, and that there can be no conjugal relations existing between them. Would you not divorce those two persons?

Again, gentlemen, the facts presented in the petition of Mrs. Fry, if you look at them carefully, are of a nature such as never can be proved by either the man or wife before a Court. Their testimony, if testimony it can be called, cannot be received by the Courts, nor can witnesses be called; for I suppose that in such a case as this neither the declarations of the wife under oath, nor those of the husband, could be received. Here, then, is this case: Bad treatment is alleged on behalf of this poor girl—such treatment, as if proved, or capable of proof, by any witnesses, the parties might possibly procure a divorce in a Court of Justice according to the mode of judicial procedure; then it would be a case in which the Courts could grant relief; but Mrs. Fry cannot produce proof of bad treatment, because it is alleged that it occurred at times and places where no human being was cognizant of it. Thus it would be utterly impossible for the party ever to obtain a divorce in a Court of Justice. But, gentlemen, I do not rely so much upon that as upon the fact that is apparent on the face of the petition adverted to—that your laws not only require that this bad treatment should take place and be proved, but that it should make such an impression on the complaining party that she believed her life to be in danger, or that she was thereby forced to

withdraw from her husband. Now, gentlemen, if that is so, the complaining party must swear that such was the impression made upon her mind, that she considered her life in danger, or that by reason of such cruel treatment she was obliged to withdraw from her husband's domicile. She has given to you her reasons why she cannot make that oath. Now if it be necessary to the body of the petition that the complaining party should be compelled, in consequence of the bad treatment spoken of, to swear to those specified conclusions, it is perfectly clear that the Legislature intended to vest no jurisdiction in the Courts in cases where the wife is unable to do so. This is clear to demonstration. Let me illustrate this: You all know of the proceeding necessary to obtain a warrant for a breach of the peace. A man threatens to burn your barn, and again to your face threatens to take your life; you must go to a justice of the peace—for justices have cognizance in such matters—and you must swear that you believe that your property or life is in danger; and upon this belief only, the justice takes jurisdiction, and a warrant will be granted. Merely proving the threats will not suffice. You must swear that you go in fear in consequence thereof. These matters are left by the Legislature to the conscience of the party. Possibly some there are who from a slight cause would fancy their lives in peril; others again, of a more robust nature, may require a more violent demonstration to arouse them. The gentleman on the other side (Mr. Wharton) refers to the statute of 1855, which he says enlarges the jurisdiction of the Courts. You will plainly see, on reading it, that it is merely intended to extend the jurisdiction of your Courts to cases occurring out of the State of Pennsylvania. That law says that, notwithstanding the parties resided outside of the State at the time the conduct complained of took place, the Courts of the State to which the complaining party has removed may take jurisdiction of the case. The law of 1855 was only intended to extend to cases of that kind that had not been previously admitted into the jurisdiction of the Courts.

Gentlemen, if this petitioner has assigned to you some causes for a divorce which might be proved, and such as the Courts take cognizance of, and if she has also assigned to you other reasons which would be sufficient in your judgment to entitle her to a divorce, why,

unquestionably, you would not refuse to do so, because some wrongs are alleged as to which the Courts can take jurisdiction.

Let us dismiss from our recollection all disputed matter arising from the conflicting statements of the parties. There are points upon which they do agree—that they were married on the 2d of August; that they soon after came to an open rupture. Mr. Fry, whatever may be his palliative plea to you, admits that his conduct was so guilty that he was compelled, as a gentleman, to ask his wife's pardon for what he had said or done to her; and that this rupture was occasioned by the belief Mr. Fry entertained that the affections of his wife were about to be bestowed upon another man. Both allege that they will never live together again. Are there any disputes about these facts? None. Now, I ask the Legislature of Pennsylvania, I ask you, gentlemen of the committee, whether you will not consider this to be sufficient ground for dissolving the bonds of matrimony? Let me ask, who is it that begs you to free her from this marriage contract? It is the daughter of a respectable old gentleman; and I believe that that old gentleman has been admitted to have been a most excellent and useful man—a benefactor in his way; he is known to have been useful to many persons, and above all, he is known to entertain that parental affection which God Almighty has implanted in the bosom of man for the protection of his children. In regard to this girl, gentlemen of the committee, I beg you to note that she is pure and uncontaminated, as far as any overt act is concerned. We have that admission made in your presence, this night, by this man, (Mr. Fry,) her husband, and his counsel. At her eighteenth birthday, before she was of age, she entered into the marriage contract; whether the courtship was long or short, we are not now informed; whether those peculiar traits which Mr. Fry states were carefully concealed or not, is a statement of his own.

Gentlemen, it is stated in some of these memorials that Mr. Fry was twenty-eight years of age at the time of his marriage; his wife eighteen. A young lady just emancipated from the boarding school was thrown into his arms. And now let me ask whether a man of his age, a gentleman of the education that this gentleman possesses, a citizen of Philadelphia, familiar from his early youth with the intercourse of both the male and female population of that city, be-

coming acquainted with a young girl of eighteen, just from school, as I have said—could he not tell whether he, a man of twenty-eight, had succeeded in really possessing the affections of that girl or not? It would seem to me that the experienced gentleman of society, acquainted with ladies and those whom we call women, whom we do not dignify with the title of ladies—I mean the inferior class, the hard working though honest and honorable class of society—could easily tell whether he had gained the affections of that young girl or not, or whether it was a mere caprice, or the mere persuasion of the moment that induced her to give her hand and withhold her heart from him. I do not wish to say any more, gentlemen, than I compelled to say on this subject; but I must remark that this gentleman should have known, and above all, the instincts of nature should have told him, whether he had or had not gained the affections of this young girl. It has been a long time since I have had experience in those matters; but I think that a man of twenty-eight, in this country, may be supposed to be able to ascertain whether or not a young girl's affections come to him from her heart. Nature has provided, in our common instincts, a safeguard against a mistake as to this, for I do not believe that God ever intended two persons of opposite sexes to be man and wife unless their hearts rushed together. Now let us look at the facts, however painful it may be to investigate them. Did Mr. Fry know that his wife did not love him, when, on the 2d of August, in the presence of the priest, she gave him her hand? I leave you, gentlemen, to draw all the inferences I might make on this point, whether Mr. Fry did not run “the hazard of the die.” If he rushed into this marriage contract without that due care and caution which a man of his years ought to have exercised, why, then, gentlemen, he has no right to complain of the consequences. As regards his wife, she has not been educated in the ways of the world; and, above all, it is manifest that she has not been instructed to write a letter fit for inspection—or in such a way as a practical lady would write a letter at all—as any of you, gentlemen of the committee, who have noticed her letter to Mr. Wagner, will bear testimony.

On the 5th day of August, about, Mr. Fry writes to the father of this girl that he is exceedingly happy. On the 14th of August he writes to the brother of this child, then in Europe, of the blissful

existence which surrounds Emily's life and his own. It was at that very time that the rupture took place, for which he asked pardon from his wife. He says, in his petition, that within a fortnight she had grown cold and indifferent, and these letters were written within a fortnight of his marriage. Now, gentlemen, what does this mean? Did he mean what he said when he wrote to the brother of that child? Did he mean what he said when he wrote to the father of that child? I do not wish to torture this gentleman (Mr. Fry) with any unkind observations, but it follows as a necessity, from the very position he occupies, that he was deceived in supposing that he had the affections of his wife. Now, gentlemen, if he has suffered himself to be deceived, he has brought all this result upon himself. He has entered into the holy bonds of wedlock without considering whether Emily Grigg really did give him her hand without her heart. What could have occurred within those few days to cause the alienation of her affections, if he ever had them? You, who have been husbands or fathers, feel the condition of a young girl abandoning that husband's protection which she needed. She looked to Mr. Fry as the only man from whom she could expect future protection and assistance. Now, was it possible she could so soon turn from him, if that gentleman had conducted himself as he should towards his wife, and earned her respect? How was it possible he could have lost her affections in one short week?

There was this poor young child, clinging to a husband, with only the experience of her tender years — the figure is a very hackneyed one, but always very appropriate — like the ivy twining around the broad oak. Her affections naturally inclined to him; and if he had fulfilled *his* part of the marriage contract, this unfortunate occurrence would have been the last thing on earth to have happened; on the contrary, the bud that was just breaking forth into bloom would have blossomed in beauty and fragrance. The weakness of human nature is such, gentlemen, that after the excitement of the honeymoon had worn over, her affections might have left him, or his affections have left her; but during the first two or three days that would have been impossible, provided any affection ever existed. We have been left entirely in the dark as to what motives were uppermost in bringing about this marriage; but I say if this man ever had the affections of

this child, he could not have lost them in a fortnight. This is the most intricate case I ever had the fortune to look into. There are contrary ideas starting up all through it. Now, gentlemen, if it is supposed that this girl married this man without feeling for him that affection which alone can secure happiness in the conjugal relation, why then it was his misfortune, and the happiest event of his life would be the obtaining of a divorce that would release him from the bonds of matrimony, and from that poor girl. Under these circumstances Mr. Fry could receive no real injury, and no imputation would fall upon him if the Legislature should act. You may disregard any and all statements made by the parties, contradictory of each other. These assertions may be thrown aside by you, gentlemen of the Committee, and you may take the admitted facts, and you will find yourselves solemnly called upon to grant this divorce, and allow these people to go their ways. Is it not so? This is an unhappy marriage; the parties can never unite. If you believe that these people have been unhappily united, and believe it would be a blessing and benefit to both of them to be separated, and that the power which is given you in this can be exercised with happiness to the parties concerned, you will not confine yourselves to those narrow and necessary rules which are adhered to in a Court of Justice. Your power is unlimited, except by your sound discretion. I ask you, therefore, to act upon no fact which is disputed; I ask you to grant no divorce on grounds which impeach any one; but to take the facts as they are admitted to exist, and act upon them as the parties desire. You can do that; and, sirs, no law of society, no ordination of Heaven, forbids you to do good when you have the power to do it.

On the other hand, is it not your bounden duty to do that which you are commanded to do? In all the law that has been promulgated to the world, in the Ten Commandments, in the laws of Rome, in all the law that has been proclaimed by judges and lawyers, no man has ever doubted that he should do unto others as he would have others do unto him.

The gentlemen on both sides have indulged in some statements in regard to facts, outside of the record, within their personal knowledge. I can state to you, gentlemen, that this excellent old man, the father, is driven to the verge of insanity by this unhappy affair. What is

his condition? This solace, the pet of his old age, has fallen into an unhappy marriage which has rendered all the parties in any way concerned perfectly miserable, and which seems to be on the brink of ruining this child's reputation forever. He sees that child in this equivocal condition—not married, but partially married—not exactly under the legal control of her old father, to whom she has flown as a refuge, because her husband still has a right in some sense to control her. There she stands—a beautiful flower, cast out from the garden to wither, or to bloom in the parental home. Gentlemen, if you have daughters—I do not speak of your sons, for in them your affections are tainted with the dross of ambition—but for your daughters you desire they should have happiness. For your sons you desire they should make some figure in the world; but for your daughters, all you ask is that their peace may be unruffled.

There stands that old gentleman. The only boon he asks is that that child should be sheltered in her father's arms; that she should be, in some way, under the inspection of her father hereafter, that he may instill into her mind those lessons of propriety and morality which alone can make any being happy and respectable.

Gentlemen, as guardians of the welfare of the people of Pennsylvania, if you have the power to dispense happiness, it would be a dereliction of duty not to bestow it upon that old man, who sees his daughter treading the slippery path of life, without a guiding hand. How different the conditions of my old friend and myself now from the time when first we together opened our eyes upon human existence! How does his heart throb with anguish to-night! and how did it beat with exultant joy and happiness, when fifty years ago he and I parted in the little town of Lebanon! He is now weeping over his own desolation for his child; himself, like some blasted tree, its trunk only standing—for he has but a small portion of life remaining to him—his tears streaming from his eyes upon that young daughter; and if there be any tear so pure that it would not stain the face of an angel, it is that which a father sheds upon an unhappy daughter. Will you see an old man go down to the grave in sorrow, his health shattered, his mind distracted, his life ruined, leaving behind him a child, of whom he who should have been her protector, publicly declares that he will have nothing to do with her? and her father, who could in-

aspire by his counsel some comfort in her present calamitous circumstances, he too gone, leaving her to fade away in the universal darkness of despair, by the loss of that reputation which to woman is everything that can be given to a human being in this world! Why should you keep that child in this situation? Why should you withhold from that father's bosom this scion that has been taken from him and returned to him? The gentlemen on the other side say, two years hence Mr. Fry will do this thing himself; but he says now, "True, I have taken your child, but I will not touch her—I will not contaminate my hands—I will have nothing to do with her." Thus he addresses himself to her father. What good Samaritan will fling oil upon the wounds of this poor baby of a woman, unless it be this old man? He cannot do it, gentlemen, unless you give him that power; and why will you not do that? If she has erred, put her in the way to retrieve her error. If both these parties have agreed to put themselves as far asunder as the poles of the earth, why should you, then, keep the woman from turning to some one from whom she can ask counsel? If it was your daughter, Mr. Chairman, if you had the blessing of having a beautiful daughter, and were to see her in that situation, would you not implore, "Give her to me—restore her to me! If she has erred, give her back to me; if she is wayward, she is my child, my daughter—give her back to me!" and I ask you to do unto others as you would have others do unto you. There is no better rule of law than that. You have the power to do it; and yet will you refuse to do it? No law of God or man was ever made without a purpose. Jesus himself cursed the barren fig-tree, and it withered. The reason was, that it was the function of that tree to bring forth fruit, and it did not do it.

Gentlemen, as I have told you, I did not come here to make a speech; but I should have expected—if I may be allowed the expression without the charge of blasphemy—my God to forget me if I could forget an old and early friend. I came here for my friend; I verily believe he is as honest and honorable a man as it has ever been my fortune to be acquainted with; and I have known many good and true and upright men. Gentlemen, you are to determine in granting this divorce what good will result from it, or what evil it might produce. Every citizen of Pennsylvania is entitled to your consideration and regard,

but especially the father of the woman who has made an unhappy marriage. Years hence, if you will act now as you should act, the gentleman who sits there (Mr. Fry) will avow that you did all in your power to make him happy, and that it was unwise and the impulse of an undue feeling to attempt to keep himself bound to this unhappy marriage. He will say, some years hence, when this excitement shall have passed away from his mind, that "it was well done, and no matter for what cause; that it was never intended that we should travel the journey of life together; and it was well we separated and took different roads as early as possible."

Gentlemen, much has been said and much comment has been made upon a letter written by *this girl to that boy* at West Point (Mr. Wagner.) We always err when we look only at one side of a question; we also err when we infer altogether from one fact. How did that girl come to write that letter to that young man? She tells you that having left her father's home, and being mistaken in the character of her husband, she naturally turned to the first person that was presented to her mind. Now, gentlemen, it may be, and you may take the supposition, that this girl did not love Mr. Fry. If she did not love him, why then what was it that operated on her mind and caused her to marry him? She was a mere baby-woman, knowing nothing of society, feeling little inclined to stray away from the natural feeling for her father's house. She supposed that all she would need would be found in her husband. Here was a young girl allowed to read, perhaps, the novels that float about the country, and there was a young gentleman with epaulets on his shoulders, who attracted her notice. And now, gentlemen, I appeal to your sympathy to say, if she did not love Mr. Fry would she not naturally turn to the first object she should meet? If she had been twenty or twenty-two years of age, there might not have been so much apology for her; if she had been twenty-five, it would have been thought the result of a confirmed habit; if twenty-eight, then it would be supposed that the woman who could make the vow she did on the 2d of August, and within two weeks from that time profess to admire another man, might be given over as hopelessly lost. But we are to consider a girl of eighteen years of age, whose mind betrays itself in the letter she wrote, and which has been alluded to—the very language of that letter has been taken from some popular

novel, or perhaps a paper—the *Ledger*—is there not a paper published in New York of that name? I doubt not that the young man (Mr. Wagner), who seems to be a respectable young gentleman—and the institution into which he has entered has, I hope, instilled into him the highest sense of honor—he too thought he was acting according to the highest pattern of chivalry and modern excellence. He saw that this girl needed sympathy; he saw that she made her complaints to him; he saw that she was unhappy, and that she poured out her sorrows to him; and he formed himself into some Quixotic character, and to that character he addressed himself. Do you not see how it was? They had both read just such things in books, where the hero was commended for sympathizing with the unhappy heroine, and the heroine for the want of affection for her husband. Any one who has had any general experience knows that that poor girl had just such things in her imagination. “I will die for you!”—“I cannot live without you!” Have you not heard of heroines traveling over far countries to their heroes? She, too, must imitate that. She must get strange clothes; doubtless she had read the poem in Ovid’s *Metamorphosis* of the two lovers who were separated by a wall, which prevented them from seeing each other, and they were dying because they could not see each other. But whatever else she may be, gentlemen, you see she is not an experienced deceiver. She is just now in that position where her husband, after abandoning her as he has done, tells you he will never receive her as his wife. Her father has rescued her from the brink of that fearful precipice she was about to leap. Will you allow her to be again exposed? Could Mr. Fry desire she should be placed in that painful position again? Certainly not.

Gentlemen, I should not be here, I should not have addressed one word to you, but, as I told you, I had an interest in this old friend of mine; I could not stay away from him in his hour of misery; I am here as his counsel, and have relieved myself of what I consider to be the obligations of man to man, of friend to friend, and shall be ready and willing, like him, to acquiesce in the result of your decision. I do not think that any of the parties concerned will be disappointed if you decide to divest these people of their marital obligations. They have both concurred in that; they have decided that question for themselves; they have actually dissolved the connection, and you

have only to sanction their own act by the form of law. You will not see the young girl sent forth into the world without somehand to guide her through life. Let that hand be the withered hand of her old father, for, if what is alleged be true no other hand can save her.

NOTE.—Mr. Arthur Cannon, Phonographer, took full notes of Mr. Corwin's SPEECH, but on account of some alleged misunderstanding, *his* REPORT has been withheld from the public. The foregoing REMARKS have been written out from notes obtained from another person.

4
"WHERE THEY THAT ARE WITHOUT, WOULD FAIN GO IN,
AND THEY THAT ARE WITHIN, WOULD FAIN GO OUT."

MARRIAGE AND DIVORCE;

OR,

THE DIVORCE QUESTION.

SHOULD LEGISLATION ADMIT NONE, ONE, OR MORE GROUNDS OF DIVORCE?
WHICH SHALL CONTROL? THE MARRIED PARTNERS, OR
STATESMANSHIP, OR CHURCH-REGULATIONS?

BY

ALFRED E. GILES,

AUTHOR OF "THE SABBATH QUESTION CONSIDERED BY A LAYMAN," "CIVIL AND MEDICAL LIBERTY IN
THE HEALING ART," "A LETTER TO MASSACHUSETTS MEMBERS OF CONGRESS ON PLURAL
MARRIAGE AND THE MORMON PROBLEM," ETC., ETC., ETC.

"I have sworn upon the altar of God, eternal hostility to every form of tyranny over the mind of man."—*Thomas Jefferson.*

"If better you 're informed, speak out, be free;
If not, enjoy these honest truths with me."

COLBY & RICH:
BOSTON,
No. 9 MONTGOMERY PLACE.

1883.

PREFATORY.

IN addition to certain considerations presented by the writer, in the BANNER OF LIGHT of March 31st and April 7th, 1883, on MARRIAGE AND DIVORCE, herein restated, some other thoughts and illustrations on these very important subjects, are here to the attention of candid and intelligent readers most respectfully submitted by

THE AUTHOR.

Hyde Park, Mass.

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MARRIAGE AND DIVORCE.

"There is no graver event in a man's life, than marriage. It may prove an inestimable blessing, the subtle influences of which will permeate every hour of the day, strengthen every fibre of his moral being, and by its satisfying repose to the affections, give to his intellect a calmer and more continuous sweep. It may also prove a desolating evil, numbing the sympathies, irritating and scattering the intellectual energies, distorting the life."—*G. H. Lewes's History of Philosophy, Vol. II., p. 564.*

Indissoluble marriage and no divorce, is the doctrine and practice of the Roman Catholic church. With awful maledictions, pains and penalties, it has for many centuries upheld this regulation upon its members, and wherever else it could enforce it. The Bible, all Protestant sects, and monogamic indissoluble marriage are the work, outgrowth and offspring of the Roman Catholic church. Much, and yet not all, did Martin Luther and Henry VIII. shake from themselves of the works, dogmas and influences of that church when they renounced allegiance to its Pope, and became founders, the one of the Protestant Lutheran, and the other of the Protestant Episcopal church. Yet from that ancient fane of superstition they carried with them the dogma that the Bible is an authoritative and sufficient rule of religious faith and practice. While subject to the Roman Catholic church, Luther being a monk could not marry his lady-love, nor Henry VIII. be divorced from his wife; but having made one step to individual freedom by turning their backs on that then all powerful church, Luther afterward felt himself at liberty to marry his loved maiden, and Henry to divorce his unloved wife. Thus they pioneered a way for other emancipated minds in Europe and America, through priestly fens and morasses, toward the more healthful heights of political and religious liberty.

Among the Greeks, Jews and Romans, marriage and divorce at some times, and for long periods, were left pretty much to the control of the contracting or withdrawing parties, and their immediate relatives. It was a matter more of family, than of State concern. Whether a man should have one wife, or many wives, de-

pended in these nations, on his matrimonial tastes and ability to support them. The maxim of the civil law, *matrimonia debent esse libera*, was that matrimony ought to be free, both as to entering in and withdrawing from it. It was what the apostle James designates as "the perfect law, the law of liberty." There were no illegitimate children, for as all children, according to nature's laws, are legitimate (otherwise they would not be born), so all were accepted and recognized as legitimate under their laws. From the era of Christianity as a State religion, began the Roman Catholic Church to assume dominion over the conjugal relations of men and women. As Tiberius, and others of the more dissolute and cruel of the twelve Cæsars (some of whom claimed to be, and were worshiped as gods), had, from time to time, intermeddled in family relations, professedly to prevent, or to adjust domestic and social difficulties, so Christian Popes assumed and enlarged a like jurisdiction. The Roman Catholic church made marriage a sacrament; that is, declared and treated it as "a visible sign of an invisible grace for our justification"; and the Council of Trent decreed that "if any shall say that matrimony is not one of the seven sacraments instituted by Christ, let him be accursed." The church limited marriage to the union of one man with one woman, and prohibited polygamy, because Jesus had said, "for this cause shall a man leave father and mother, and shall cleave to his wife, and they twain shall be one flesh." It forbade divorce, because Jesus had said that "whosoever shall dismiss his wife, and marry another, committeth adultery." Drawing its argument from Malachi ii: 7, the Roman Catholic Church claimed that its priests were angels

of the Lord; and relying on Psalm lxxii: 6, insisted that they were gods, and held the place, and power, and authority of God on earth.* Devitalizing all learning, science and art that were not consecrated to the church, eviscerating the possibility of truth even from judicial oaths (for one of the canons of the church was "*juramentum contra utilitatem ecclesiasticam preestitum non tenet*"—meaning, no oath contrary to the interests of the church is binding), spiritual darkness for a thousand years brooded over Europe; yet there, bishops, priests, and other church functionaries increased enormously in power and wealth. Avoiding marriage for themselves, treating it as unspiritual, and more or less impure, they arrogantly presumed to regulate, solemnize (there are no solemnizations of marriage in the Bible)† and control the marriages of all other people.

"The Hebrew Scriptures relative to the commerce of the sexes were laid out of the case; and what popes, councils, *synods* and human laws determined to be marriage, was marriage; what they determined to be whoredom and fornication, was so; what they determined to be bastardy, was bastardy; but what God had determined to be, or not to be, any of these, signified no more than if he had never determined anything about the matter."—*Madan's Thelyphthora* III, 261. "The ambition and avarice of the clergy in the Middle Ages, laid the rest of the world under contribution in the business of marriage, made it a sacrament, obscured the real essence and nature of it, and wrested it out of the hands of the civil power, as to the outward and public recognition of it, to secure it to themselves; after which a man and woman could not marry but for the emolument of the Church. A newly married couple were not suffered to live together for a given time, unless they paid the Church for a dispensation. A man was not allowed *Christian* burial, unless he bequeathed something to the Church. In short, a man could neither come into the world, continue in it, nor go out of it, without being laid under contribution by the clergy." (*Alexander's History of Women*, Vol. II., p. 259).

"Here we may see, whate'er we see beside,
The layman bridled, and the clergy ride."

As time went on, the cruelty, rapacity and despotism of the Roman Catholic Church became too oppressive for wilful and strong-minded men in certain parts of Europe to endure. Hence, early in the sixteenth century was developed the so-called Protestant Reformation. From out of their religious beliefs, the Reformers excommunicated the infallibilities of the Pope, and the supremacy of the Roman Catholic Church; but not of its canonical books, out of which, and upon which that Church had built itself. "The Bible—the Bible! the religion of the Protestants!" became the Shibbo-

leth of the Reformers; and they retained the Bible subject to their private and individual interpretation of it, as their final and supreme arbiter in matters of religion. But the Bible was the composite work, the Canon and Book of the bishops, scholars and underlings of the Roman Catholic Church. They had voted certain Jewish books and epistles into the Canon, and voted others out. By clipping off and altering some parts of the admitted books, and by interpolating therein other parts, they had adjusted, and, as it were, dovetailed all parts together, and then slowly and surely, at one and another of their synods and councils, with threats, curses, pains and penalties against all dissentients, had shackled it upon the European world, as a divinely and authoritatively inspired book when interpreted by the Church. Upon, and from this Roman Catholic book, the Protestants then proceeded to build their churches, and to enact their articles of belief and discipline. So far as Protestants use their reason in interpreting the words and authority of the Bible, they are rationalists and truly Protestants; but so far as they subordinate themselves in its interpretation to the traditions of the elders, to the rulers, decretals and canons of councils and synods, they are Pharisees and Catholics. Protestantism is, as it were, an half-way-house from theologic myths and fables, to intuitive truths and scientific certitudes; from slavery to freedom; from embryo darkness to spiritual light. Its many sects and churches are but restaurants, more or less reason-lighted, on the highway.

In the course of the Reformation in Germany, occurred a case wherein a wife had deserted her husband—a preacher. It gave opportunity to certain of the Reformers to interpret and apply the scriptural texts which they thought covered such a case. Luther, then more than fifty years of age, did not, as anti-divorce pulpiteers now do, interpret *Matthew* v: 32, or any other words of Jesus, as prohibiting another marriage (probably recognizing as pertinent the excuse, which on another similar occasion Jesus offered, that all men cannot receive this saying, save they to whom it is given—*Matt.* xix: 11); but found permission for it in *I. Corinthians*, vii: 15, and wrote: "Since a preacher's wife has dealt so dishonestly with him, I cannot make his right longer or shorter than God hath done, who through St. Paul pronounces the following decision: 'If the unbelieving depart, let him depart; the brother or sister is not bound in such cases. Whoever will not stay, let him be off; the other party is not bound to stay unmarried. If he cannot remain without a wife, let him wed another.'"* Beza, Melancthon, and others, signed the same opin-

* Catechism of the Council of Trent, p. 212.

† Mr. Selden, in his *Uxor Hebraica*, says that among the primitive Christians sometimes their marriages were solemnized by a minister of the church, but they were under no obligation by law to do so; nor did any general custom prevail, so as to make it a general practice.

* Luther's Works, Walsh's Edition, Vol. X.

ion; Zwingli, Calvin, and other leading German reformers, held like views.

In England, however, though marriage was not held in the civil courts to be a sacrament, but rather a contract, or mutual obligation between its parties, yet desertion by one of the parties was not deemed so sufficient an annulment of the marriage tie, as to reinstate the deserted party into the right to contract another marriage; an opposite opinion to that arrived at by the German reformers. Canon law—that is, the decrees and bulls of Popes—and the precedents of former Roman Catholic ecclesiastical councils and courts, notwithstanding the Reformation, largely controlled English marriage law. Good and strong men from time to time endeavored to liberalize it. John Milton's wife, when he was about thirty-five years of age, in the year 1643, long before he wrote "Paradise Lost," deserted him. This sad experience caused him carefully, by study and reflection, to investigate the nature, purposes and limitations of marriage and divorce. He published a tract; probably no one in England was better qualified to write it, or has since written a better one on the subject, entitled "The Doctrine and Discipline of Divorce—Restored to the good of both sexes, from the bondage of canon law, and other mistakes, to the true meaning of Scripture in the Law and Gospel compact. Addressed to the Parliament of England with the Assembly." There is here space only for some few of his briefest arguments:

"When I remember the little that our Saviour could prevail about this doctrine of charity against the crabbed textuists of his time, I make no wonder, but rest confident that whoso prefers either matrimony or other ordinance, before the good of man and the plain exigence of charity, let him be Papist or Protestant, or what he will, be is no better than a Pharisee and understands not the gospel."—*Milton's Prose Works*, Vol. I., p. 337. London Ed., 1806.

"What thing more instituted to the solace and delight of man than marriage? And yet the misinterpreting of some scripture... hath changed the blessings of matrimony into a familiar and cohabiting mischief! at least into a drooping and disconsolate household captivity without refuge or redemption.... Now if any two be but once handed in the church and have tasted in any sort the nuptial bed, let them find themselves never so mistaken in their dispositions, through any error, concealment or misadventure, that through their different tempers, thoughts and constitutions they can neither be to one another a remedy against loneliness, nor live in any union or contentment all their days: yet they shall, so they be found weaponed to the least possibility of sensual enjoyment, be made, spite of antipathy, to fadge together.... What a calamity is this!"—p. 345.

"For many ages marriage lay in disgrace with most of the ancient doctors, as a work of the flesh, almost a defilement, wholly denied to priests, and the second time dissuaded to all, as he that reads Tertullian or Jerome may see at large. Afterward it was thought so sacra-

mental that no adultery or desertion could dissolve it; and this is the sense of the canon courts in England to this day, but in no other reformed church."—p. 346.

"An act of papal encroachment it was to pluck the power and arbitrament of divorce from the master of the family, into whose hands God and the law of nature had put it, and Christ so left it, preaching only to the conscience.... But the popes of Rome, perceiving the great reverence and high authority it would give them, even over princes, to have the judging and deciding of such a main consequence in the life of man as was divorce, wrought so upon the superstition of those ages as to divest them of that right which God from the beginning had entrusted to the husband; by which means they subjected that ancient and naturally domestic prerogative to an external and unfitting judicature."—*Vol. II., p. 53.*

"What a violent and cruel thing it is to force the continuing together of those whom God and Nature, in the gentlest end of marriage, never joined."—p. 353.

"Marriage is a covenant, the very being whereof consists not in forced cohabitation and counterfeit performance of duties, but in unfeigned love and peace."—p. 357.

"Love in marriage cannot live nor submit unless it be mutual, and where love cannot be, there can be left of wedlock nothing but the empty husks of an unholy matrimony, as undeightingful and unpleasing to God as any other kind of hypocrisy."—p. 358.

"It is less a breach of wedlock to part with wise and quiet consent betimes, than still to soil and to profane that mystery of joy and union with a polluting sadness and perpetual distemper."—p. 359.

"Christ tells us who should not be put asunder, namely, those whom God hath joined. When is it that God may be said to join? When the parties and their friends consent? No, surely, for that may concur to lowdest ends. When the church rites are finished? Neither; for the efficacy of these depends upon the pre-supposed fitness of either party. Perhaps after carnal knowledge? Least of all; for that may join persons whom neither law nor nature does join. It remains that only when the minds are fitly disposed and enabled to maintain a cheerful conversation to the solace and love of each other, according as God intended and promised in the very first foundation of matrimony. 'I will make him a helpmeet for him.'... So likewise in I. Cor., vii: 15: 'In marriage God hath called us to peace.'"—p. 39.

Ecclesiastical courts and canon law are not practically known in the United States, except in the trials of accused heretical ministers, or of church-members awakening to their reason. Possessed of no physical power to enforce their judgment, such courts do not manifest their barbarities, and can vent their absurdities only in and upon their own narrow circle of church-members. The canonical law opened the road to convents, and monasteries, to secret licentiousness, and conjugal debasement—to adulteries innumerable. *IV. Great Harmony*, p. 399. Henry Ward Beecher in 1874 is reported to have said:

"The gates of Hell opened into this world through Ecclesiastical judicatories, and the

greatest cruelties have been practiced by Christian sects, and the world has been presented with a hideous bloody-mouthed God that makes men only to drown them. The Church dominant in the world has been simply monstrous; there have been no excesses more abominable than those committed under Church discipline; the Church has been under the dominion of devils."

Fortunate for human happiness is it that in the United States, divorces are cognized only by the civil courts. In these tribunals, the natural rights, the conjugal rights inherent and inborn in men and women, not as derived from the concessions of Catholic Councils, or of Protestant Conferences, are to some extent acknowledged and allowed; but not so much as they ought to be in the interests of freedom, good morals and human brotherhood. Consequently the complaints and miseries of unfortunately married couples are more respectfully heard, and divorce relief more freely granted in these secular courts than under canon law. This liberality has provoked to remonstrance the priesthood, both Catholic and Protestant. Encyclical letters of the present Pope and his predecessor bewail the freedom of divorce, and call upon the Catholic clergy, so far as they can, to prevent it. The Evangelical clergy also, in the New England States, notwithstanding their hatred in other matters to their ancestral Roman Catholic Church, yet in respect to Divorce, conjoin with the Catholic clergy. Orthodox Doctors of Divinity, presidents of colleges and heads of theological schools, known sometimes as nurseries of superstition, publish essays and books to induce legislators and judges to prohibit divorce, and to enthrall all improper and ill-yoking couples, all married unfortunates, from possibility of escape from their prison-houses, except through the loop holes that "crabbed textuists" and blind guides, which strain at gnats and swallow camels, may perchance leave open to them.

In March, 1882, two bishops—one an Episcopal, the other a Methodist—some twenty or more Orthodox and Baptist ministers, together with one or two Catholic priests (there were no Unitarians, Universalists, Spiritualists or other Liberals among them), bewailed in Boston before a State Legislative Committee the frequency of divorce in Massachusetts, and insisted that it ought to be stopped. These clerical conspirators against freedom and human rights, asked that certain church and denominational marriage and divorce rules of theirs, should be enacted into State Statutes for the governance under grievous pains and penalties, of all the people of the State, most of whom are not church-members. Among other speakers at this hearing, was Mr. Loring Moody, a life-long reform-worker, now deceased, founder of *The Institute of Heredity*. Its object is to acquire, and promulgate knowledge of the physiological laws which are concerned in the generation and transmis-

sion of disease, vice and crime, through hereditary descent, and the influence of blood and organization on character and destiny. It promises to be a new science, and involves inquiries delicate and complicated, which, when settled, and acted on, will result in improving the welfare of the human race to an incalculable degree. But the ministers stopped their ears, and did not remain at this legislative hearing to listen to opponents' answers, but were intent only in securing enactments of imprisonments and fines, (which in modern legislation, take the place of the ancient Jewish stones), to hurl them against offenders. Thereby they somewhat exemplified Prof. Huxley's observation that "extinguished theologians lie about the cradle of every science as the strangled snakes beside that of Hercules; and history records that whenever science and orthodoxy have been fairly opposed, the latter has been forced to retire from the lists, bleeding and crushed, if not annihilated; scotched if not slain. But orthodoxy is the Bourbon of the world of thought. It learns not, neither can it forget." Certain of these same clerics since then, have organized the New England Divorce Reform League, and are soliciting funds, and engineering lectures and sermons, to enable them to constrict marriage and divorce legislation in other States. "Eternal vigilance is the price of liberty," said a patriot, a warning as needful against the plots of Evangelical Christian ministers and their church-members, as when the monition was first uttered.

As the word "Jesuit," coined by priests who professed to be all self-devoted followers of Jesus, has, from the often villanous conduct of those who bore it, become a synonym of deceit and craftiness, so the uncharitableness, bigotry and conspiracies of many Evangelical ministers and churchlings, against people's natural rights (which Rev. Dr. Mark Hopkins taught are among the most underlying general and powerful of our principles of action,* and which Rev. Dr. Francis Wayland said were as truly rights, as are the rights of God),† have so defiled and cankered the word "Christian," once a synonym of courage, honor and charity, that many intelligent and upright men and women in America and Europe, now pointedly disclaim its application to themselves. The idea of self-government, or true Scriptural righteousness, in entering in, or withdrawing from the marriage status, without the intervention of priest or magistrate, is one apparently impossible of clean conception by priests and ministers. They, and it speaks sadly for inward whited sepulchres, can associate such an idea, only with licentiousness or immorality. It was a philosopher and a wise man, recently diplomated as Doctor of Anthro-

* Boston Monday Lecture, 1880-81, p. 103.

† Limitations of Human Responsibility, p. 56.

pology, but more widely known as being the author of "Nature's Divine Revelations," who said: "Our churches represent only ignorance bigotry and tyranny when they deal with human nature." "Ministers as a rule," said Robert G. Ingersoll, a natural statesman, whose eloquent and convincing orations have largely contributed in emancipating people's minds from priestly domination and misguidance—"ministers as a rule know but little of public affairs, and they always account for the action of people they do not agree with, by attributing to them the lowest and basest motives." Wm. Von Humboldt, himself a philosopher and a statesman, in his work, "The Sphere and Duties of Government," instead of advocating with Catholic priests and Evangelical ministers, legislative oversight in marriage and divorce matters, would withdraw them entirely from its supervision. His ideas, as quoted in the *Westminster Review*, vol 62, p. 485, are as follows:

"The State should entirely withdraw its active solicitude from the institution of matrimony, . . . and leave it wholly to the free choice of individuals, and the various contracts they may enter into with respect to it. I should not be deterred from the adoption of this principle, by the fear that all family relations might be disturbed, or their manifestations impeded. . . . For experience frequently convinces us, that just where law has imposed no fetters, morality most surely binds; the idea of external coercion is one entirely foreign to an institution which, like matrimony, reposes only on inclination, or an inward sense of duty; and the results of such coercive institutions do not at all correspond to the design in which they originate."

If some of the liberal features of a marriage system thus indicated by Humboldt, were adopted in New England, is it not possible that few or no illegitimate children would be born, that the evils of prostitution (so enormous in the capital cities of Christian countries) would be largely abated, and that the harmony of families and the general welfare would be immensely promoted? In Switzerland, near to where Humboldt lived, divorce by mutual consent is now permitted by recent legislation.

But the idea of marriage being contracted or dissolved with the freedom here intimated by Von Humboldt, does not readily find lodgment in ecclesiastically educated minds. Rev. Dr. Woolsey in the April number of the *North American Review*, pp. 305, 306, writes that:

"The State ought never to adopt the role of granting divorce by mutual consent, for in every such case the parties will consult only their own interests and desire; while the State as the guardian of the highest interests of a community which has perpetual existence, must look to the permanent good of all. Moreover, religion and morals have more to do with marriage and the welfare of the family than with any other institutions. So that if the State should make light of these spiritual powers, or even disregard a pervading opinion entertained concerning them by the people, it may do itself an injury which admits of no reparation."

The legitimate inference from this paragraph is that the State is supreme over its citizens in each and every department of their lives; that it can rightfully control their actions and their thoughts, so far as it is possible, even in the spheres of religion and morals; and that by not holding this jurisdiction; and sometimes exercising it, it might do itself irreparable injury. This, which appears to us to be Rev. Dr. Woolsey's idea of the office of the State, allows the same scope to its powers, as has been held and acted upon by czars, popes, potentates and their apologists and upholders. It is the idea that the people were made for the State, and not the State for the people. It is an exemplification of the pharisaic idea that man was made for the Sabbath and not the Sabbath for man. Differences of opinion on the moral quality of actions will inevitably arise, according as those actions are viewed from a monarchical or from a republican point of view. Hume says, "All regulations" as to marriage and divorce "are equally lawful and equally conformable to the principles of nature." Rev. Dr. Woolsey fails to indicate that he inwardly is American. Autocratic and priestly ideas, theologic conceptions, "idols of the nations," "idols of the cave," as Bacon calls them, dominate all priests and ministers. They have psychologized Rev. Dr. Woolsey, and, resurrected from effete despotic dynasties, and born out of due time, have found utterance in his books and articles on divorce legislation. From a republican point of view, they must melt into thin air, and leave not a wreck behind.

It may be necessary here to dwell somewhat on the characteristics of American republican governments, characteristics which essentially differentiate a republican State from the "state" assuming to be "the guardian of the highest interests of a community," which state Rev. Dr. Woolsey in the nineteenth century would galvanize into life, to rule Americans.

Rev. Dr. Woolsey, and other evangelical and catholic ecclesiastics in the United States and elsewhere, professedly regard human nature as totally, or at least essentially depraved. In their doctrines, in their plans and methods for promoting human welfare and good morals, they do not so appreciate, as liberals do, the essential, energizing and divine principles of human nature, out of which have developed democratic and republican forms of government. Among these principles are love of liberty, and desire for happiness; they are inherent and inborn, are a part of the nature of every human being. They are man's birthright, to be pleasurably exercised in this life (if not unjustly or unfortunately repressed) and to be exercised and enjoyed in the life to come. But many statutes, Protestant and Catholic in their origin, are prohibitions of men's natural rights.

Church history reeking with blood, the flames and dungeons of the Inquisition, the axe, thumb-screw and gallows of English and Scotch religionists, and the additional divorce-restraining penal statutes now asked for, by Catholic priests and evangelical ministers, are proofs of the statement.

The National, and several State governments of the United States, are founded on the recognition and acknowledgment that liberty and happiness are all men's prerogatives, and that all men possess natural, essential and inalienable rights to be free and happy, each in his own way, and as he pleases, provided that he invade not the equal liberty and happiness of other persons. These stones, which church and empire builders rejected, are become the chief corner-stones in republican constitutions. "To secure the blessings of liberty to ourselves and our posterity" is the final purpose declared in the Preamble of the Constitution of the United States. All men have "natural, essential and inalienable rights;" "...of enjoying and defending their lives and liberties;" "...in fine, "of seeking and obtaining their safety and happiness," is in the very first article of the Constitution of Massachusetts. No infringement on the corresponding equal rights of other people, is the limitation upon the exercise of these natural rights; in other words, *justice* is the limitation. To establish justice (*sum cuique*, to each his own,) is an expressed object of the National, and to "obtain right and justice" "conformably to the laws," is a declared purpose of the State Constitution. Of course the laws ought to be *just* laws; for justice could not be obtained, conformably to unjust laws. The American idea of civil government, is the very opposite of the ideals, on which Asiatic and European governments (often the earthly, as well as the heavenly ideals of priests, bishops and ministers who speak adoringly of *thrones*) were founded. Their objects were the aggrandizement of the rulers and clergy at the expense of the people; the result was the people were enslaved, and the rulers became czars, popes, kings, and some of them were called gods. But the American idea of government, "a government by the people, of the people, for the people," thus tersely phrased by President Lincoln, is to secure to the people, to each and every one of them individually, all the blessings and privileges of LIBERTY. He is to be unhampered, unbound, free from traditions, from restraints of ancient and of modern political and religious chieftains; to be liberated from papal bulls, from bishops' surveillance, and edicts of kings, from homilies of priests, exhortations of ministers, and exegeses of doctors of divinity; himself alone to judge (as did Jesus, Luke xii: 57) what is right; restrained only by the single limitation of not infringing the equal

rights of any other person; in other words, restrained by the principle of *justice*. This American idea of government, differently phrased in the Constitutions of the several States, is the same in principle, as what Herbert Spencer has demonstrated as the law of social relationships; namely, "that every man has freedom to do all that he wills, provided that he infringes not the equal freedom of any other man." Perfectly consonant with it is Justinian's explanation of justice, viz., "to live honestly, to hurt nobody, to render to every one his due," which Lysander Spooner, in his recent admirable tractate entitled "Natural Law, or the Science of Justice," epitomizes into the phrase "to live honestly," since to live honestly is "to hurt no one, and give to every one his due."

If these views are correct, it follows that "the State" is not, as Rev. Dr. Woolsey seems to teach, "the guardian of the highest interests of a community," (an ambiguous phrase, because of the diverse meanings of "highest interests,") but only of its *liberties*; and may disregard "religion and morals, and a pervading opinion concerning them," except so far as said religion, morals and opinion may unjustly invade the religion, morals and opinions of other people; in which event it is the duty of the State to protect the corresponding rights and liberties of the invaded people.

Herbert Spencer, while recently in New York, said that Americans were gradually losing their liberties. Many thoughtful Americans, calm observers, have expressed a similar opinion. More than ten years ago Mr. W. F. Jamieson published in Chicago his work entitled "The Clergy a Source of Danger to the American Republic," containing startling facts and sound arguments in support of the charge. Since then further and gross usurpations from the peoples' rights, of ungranted powers, by courts and legislatures, operated on and influenced by clerical agencies, point in the same backward direction. "Ecclesiasticism in State matters always has meant, and always will mean—what it is—tyranny."

It follows, therefore, from the foregoing principles of American republican liberty, that when married couples find that their union is hurtful, injurious, disastrous to themselves in bodies and minds, entailing disease on their posterity, it is their natural right, their constitutional privilege, and it is their social, moral, civil, and highest duty to separate (for two cannot walk together, except they be agreed, *Amos*, iii: 3); legally if possible, to sever what then is a barbarous and superstitious bond; and while doing so, it is equally their duty to deal honestly (if possible, generously) with each other, in respect to property and the best care of their offspring. It is true that all American courts and legislatures do not per-

ceive the full extent and efficacy of the American idea of human natural rights, and of individual freedom, limited only by justice; and do not, in their administration of public affairs, allow these principles full play. Their hesitation, their restraint may be, perhaps, because their readings have been, and their thoughts and reasonings now are, more or less in the blasting shadow of ancient ecclesiasticism. Not unlike the malarious vapors of mythological religions, the subtle poison of canon law, even when diluted by passing through the veins and brains of several generations of ancestors, still infects their understandings, and obscures their perceptions of freedom, justice and honesty.

It appears, as before quoted, that Rev. Dr. Woolsey is opposed to the rule of granting divorce by mutual consent, because its parties would consult only their own interests and desires. To which it may be replied—who better than the parties themselves, in general, are qualified to know and to regulate their own best interests? The consciousness of personal responsibility, and consequent carefulness in the management and regulation of one's own concerns, develops and grows in most of the New England people, correspondingly with the exercise of their rights and liberties. With enlarged observations, and additional experience, the notions of all earnest intelligent men in respect to their rights and liberties, necessarily broaden out; even Pharisees and ministers may become hospitable to new ideas and institutions, and charitable in their judgments of the acts and opinions of persons with whom they had most widely, and intensely differed. The Apostle Paul, for an instance, was at one time zealous toward God, according to the perfect manner of the law of the fathers (Acts xxii: 3), and persecuted unto death men and women; binding and delivering into prisons, seceders from that law. He did not perceive nor admit the doctrine that they had “natural rights” in respect to religion. But subsequently, after certain severe personal experiences, his nature was more developed and refined; his notions of *liberty* and of “*natural rights*” were enlarged. He then inquires (I. Cor. x: 29), “Why is my *liberty* judged of another man's conscience?” In II. Cor. iii: 17, he says, “Where the spirit of the Lord is, there is *liberty*.” In Gal. ii: 4, he refers to “false brethren who came in to spy out our *liberty* which we have in Christ Jesus.” In Gal. v: 1, he exhorts to “stand fast in the *liberty* wherewith Christ hath made us free.” In v: 13 he urges by *moral suasion*, not by punitive statutes, that having “been called into *liberty*, they use not *liberty* for an occasion to the flesh. In Col. ii: 16, he exhorts to let no man therefore judge for you in meat, or in drink (he evidently was not a “prohibitionist”), or in respect of a feast

day, or of a new moon, or of Sabbath days (he would not have enforced Sabbath observance on his neighbors), and in v. 20 he asks them, “Wherefore, if ye be dead with Christ from the rudiments (that is, from the A B C lessons) of the world, why, as though living in the world, are ye subject to ordinances? *Touch not, taste not, handle not,*,” Paul here remonstrates that they permitted themselves to be subject to other men's statutes, as to what they should handle, touch or taste. Such statutes or prohibitions, he asserts, have a show of wisdom, but are really of no value in restraining fleshly indulgences. He would have them, as Jesus also taught, judge for themselves what is right. In the matter of marriage and divorce, an almost unlimited liberty was permitted and practiced, both among the Jews, of whom Paul was one, and also among the Colossians, whom Paul was then addressing. Paul's views of *liberty*, as a necessary condition to, and means of religion and genuine morality, so widened, and so far transcended all governmental statutes, that in I. Cor. vi: 12, he declares, “all things are lawful unto me,” and that his meaning might be fully appreciated, he repeats it, “all things are lawful unto me,” but not all things are expedient, and he will not be subject to the power of any. He had grown, or come into the perfect law, which St. James says (James i: 25) is the law of *liberty*, and discarding other men's laws, made his own laws for his own government. Paul, were he now alive on earth, with his then expressed opinions, could not and would not (any more than could or would Jesus) be a consistent member of any Roman Catholic, Evangelical, or Orthodox Church. Both Jesus and Paul in their efforts to promote reforms, were moral suasionists, and never practiced nor advocated legal coercion, but shunned it. The principle of *LIBERTY*, that is, freedom to choose right or wrong, to make a good use or a bad use of one's liberty, is the foundation of all sound morality; all mere coerced morality is hypocrisy or a sham. The clergy venerate, and talk of sacred books, and sacred days, and sacred institutions. However sacred they may be, let it be constantly borne in mind, especially by Americans, that nothing is more sacred, nothing is more divine, and nothing is more worthy of veneration, than are *human natural rights*. No crime is more heinous than their violation. The Declaration of Independence asserted them. Revolutionary heroes died to protect them. The National Constitution, and the political Constitutions of all the States of the Union, were ordained and established to secure them. There can be but little goodness, less morality and virtue, where men and women's natural rights are violated or disregarded by the State. In the State of Massachusetts there are about one hundred thou-

sand more females than there are males. If every man in the State had a wife, there would remain thousands of women without husbands. The desire for maternity is natural, on the part of most, if not of all women of nubile age, and normal development. "Give me children, or I die," was the despairing cry of Rachel to her husband (Gen. xxx: 1). Every one of these thousands of unmarried females is entitled, under the Constitution of the State, to the enjoyment of her natural right to motherhood. Yet the puritanic Statutes of the Commonwealth, more bigoted and priest-beshrived in their limitations in respect to this matter than those of England, New York and certain others of the United States, inflict imprisonment, or pecuniary fines, upon women, who avail themselves of their natural right to motherhood, without the intervention of an husband of their own. Are not the upholders and enforcers of those Statutes, morally more criminal than are their victims? The Scribes and Pharisees bind heavy burdens, grievous to be borne, and lay them alike on women's and on men's shoulders. Dr. Benjamin Franklin, in his day, urged the folly and inhumanity of such legislation, in a powerful argument, which, to avoid bringing clerical obloquy upon himself, he permitted to be published—not over his own name, but as if it were really what it purports to be—"Polly Baker's Speech before a Connecticut Court," in defense of, and apology for having enjoyed her natural right to motherhood, outside of marriage statutes. Surely it is persecution to offer any molestation, legal or otherwise, to quiet people, who infringe on no other person's rights. Whether Polly Baker did, or did not impair the welfare of the State, by adding good citizens to its population, let the reader determine; but certain it is, that the stripes and imprisonment inflicted on her, disturbed her quiet, and were therefore no less persecutions, than were the stripes and imprisonments inflicted by religious fanatics, on St. Paul for preaching the gospel.

The pith of Rev. Dr. Woolsey's arguments why mismatched partners should not be divorced by mutual consent, so far as his arguments have not already been considered, is that "to grant divorce except for adultery, does come into conflict with the faith and discipline of large bodies of Christians" (*North American Review*, p 315). In other words, he would, by enacting fines and imprisonments on all offenders, subjugate the fifty-three millions of the people of the United States, of all religions, and every nationality, to the marriage and divorce regulations of his Church. He would ignore the natural rights and liberties of freemen and freewomen as intelligent, learned and as honest as himself (perhaps more charitable and lovable), and rivet upon them in their earthly pilgrimages, such conjugal texts, yokes and bur-

dens, heavy and grievous to be borne, as he and like-minded ecclesiastics may devise; and does not propose to move a finger to lighten them, unless the sufferers shall first commit adultery. Such is the scheme; such the yoke and burden, as I understand it, which Rev. Dr. Woolsey, and pulpiteering divorce prohibitionists would impose as scriptural law and morality, upon the people of the United States. I am amazed! I am shocked at its barbarity and immorality! It is absolutely flagitious. The ways of churches and churchmen, are past finding out by ordinary-minded worldly people. The poet Shenstone mentioned one office of a Church, was to frequently harass and infest the laity according to law. Col. Ingersoll says "the Church has made more orphans than it has fed. It has never built asylums enough to hold the insane of its own making. It has shed more blood than light," and its object in its present anti-divorce crusade, is to multiply and intensify additional pains and penalties upon the statute book. Job xv: 34, 35 says of "the congregation of hypocrites" that "they conceive mischief, and bring forth vanity," or "bring forth misery," as Noyes's version renders the passage. If Job had reference to divorce-reform leaguers—and they now-a-days should invite my coöperation—I should, in view of the above extreme wickedness of their plot, be inclined, in the words of the Psalmist (xxviii: 3) to cry, "Draw me not away with the wicked, and with workers of iniquity, which speak peace to their neighbors, but mischief is in their hearts." Legislatures are not synods; they are not convened to formulate creeds and articles of faith. Their true purpose is to promote the public welfare, in accordance with the principles of liberty and justice.

"With Freedom's soil beneath our feet,
And Freedom's banner streaming o'er us."

It is well known that the prohibition against divorce, except for adultery, practically operates in those States where such is the statute, as an inducement—yes, as a premium—with discontented married persons to the commission of that offence. Adultery being the only legal path of escape from the galling marriage bond, some persons in their agony for liberty will resort to it. Does this consideration weigh with Rev. Dr. Woolsey? No more than did Antonio's appeal for mercy, weigh with Shylock. They both insist upon the bond. For such tempted unfortunates, says Dr. Woolsey, "there are or can be laws which will make such a step costly to the one who takes it." He thus covertly threatens further, and costlier pains and penalties—that is, he would give the rack another turn.

"How strange it is, while on vital questions,
We always meet with some humane suggestions
Of gentle measures of a healing kind
Instead of harsh severity and rigor:

The saint alone his preference retains
For bills of penalties and pains."

All penal statutes, that do not arise from absolute necessity, says Montesquieu in his *Esprit des Loix*, are tyranny. Beccaria, also, in his *Essay on Crimes*, teaches that the legislative right to punish, originates from the necessity of defending liberty, private as well as public liberty, from usurpations; that is, it arises from the right of self-protection. In all ages, among all people, priests and clerics have classified and treated as crimes, many innocent actions which had not a particle of criminality in them. Crimes are violations, by one or more persons, of other persons' rights in person or property. Vices are not crimes, vices are the hurts that a person inflicts on himself. The legitimate object of government, is to protect people's rights and liberties, not to punish vices. Yet the clerical profession have generally been the most forward to instigate legal pains and penalties, against vicious persons, whose own vices were their sufficient punishment. In the April *Popular Science Monthly* for 1883, in an interesting and instructive article on the Economic Functions of Vice, its author shows, that vice is not so much a cause as an effect; not so much a disease, as a symptom; vice does not make a nature weak or defective, but nature expresses its weakness and defects in vice, and that expression needs not legislative punishments, for it brings about naturally in one way or another, its own extermination. Vices cannot be suppressed by external coercion, any more than can fistulas, eruptions, and other diseases, which Nature brings to the surface, in her efforts to throw them off. Some vices, like some diseases, may be outgrown, healed or otherwise eliminated. Attempts to suppress them may, for a time, cover them from observation, but finally, they are sure to break out, perhaps in other forms and more calamitously. Hence Societies for the Suppression of Vice, while repressing the open trade and circulation of indecent literature, thereby, as it were, making clean the outside of the cup and platter, are likely to generate other and worse corruptions. The public sanctioning and pecuniary support by ministers, of lying, deception and other detestable deviltries perpetrated by certain yet more detestable agents of these cruelty-inflicting and vice-generating societies, indicate some of their demoralizing tendencies.*

**Facilis descensus Avernæ*. Easy the descent to hell. Rev. Dr. Howard Crosby, Rev. Dr. J. M. Buckley and other Evangelical teachers of religion have publicly, as appears by *The Independent* and other papers, justified the use of lying and deception, defending them as employed by the notorious Anthony Comstock, Secretary of *The New York Society for the Suppression of Vice*. Can lay-members of such societies escape the snail, which can besell the moral perceptions of even doctors of Divinity? "If the foundation be destroyed what can the righteous do?"—*Psalms* xl: 3.

"Dare to be true. Nothing can need a lie."

A fault, which needs it most, grows two thereby.

"Truth is strong, next the Almighty."—*Milton*.

"Every violation of truth, is not only a sort of suicide in

Statistics of escaped fugitive slaves, were mournful reading to their masters in *ante bellum* days; but Liberty's sons probably did not grieve much over them. So the statistics collected by Rev. Dr. Woolsey, Rev. Dr. Dix, and by the Agent of the New England Reform Divorce League, showing, as they do, a proportionate greater number of divorces in New England, than in other States, do not necessarily indicate any deterioration there, of true religion, sound morality, or clear intelligence. In truth may it not rather be proof of progress in all these particulars? Is the average of intelligence, religion and morality higher in Spain, Italy, Mexico, South America? Yet in all these countries are no legalized divorces. Frightful would be the statistics, could they be gathered, of the poisonings of husbands and wives, the infanticides, the abortions, the desertions, the heart-breakings and jealousies, and the thousand other nameless calamities, vices and evils that grow out of indissoluble marriages, and statutes enacted in its behalf. Statistics can never prove the morality of the *status* sought by clerical divorce prohibitionists. Rather as Judge John A. Jameson, of Chicago, says in the same *North American Review*, p. 316, liberality in granting divorce is a step in the general movement for social freedom which characterizes our age, and proves to many minds "that it is not obviously immoral, and that it must have plausible reasons to show for itself as a social necessity." "Divorce," says A. J. Davis, *IV. Great Harmonia*, p. 399, "is an outbursting, a liberation, a step to something better." Not improbable is it that with the full growth of natural human rights, of liberty and of justice, there will yet develop on earth, probably at first in the United States, in spite of "crabbed textuists" and hardened clerics, a condition of society surpassing in health, wealth, intelligence, refinement, social harmony and true religion, all heavens preached by churchmen, and all elysiums sung by poets. Every victory of Free Thought and Science over Tradition, of Truth over Error, of Human Rights over Theologic vagaries, hastens the day.

Besides Rev. Dr. Woolsey, are other Doctors of Divinity who have recently written, or have publicly spoken on marriage and divorce. All along in church history, it has often been with them a matter of prayer and sermon, of homily and essay, of treatise and volume, and yet is now no more settled by them on sound and humane principles, than it was a thousand years ago. Young men and maidens are most interested in the marriage part of the discussion, but many of them, as they mature in years and wisdom, study its divorce part. In a little book,

the liar, but is a stab at the health of human society."—*R. W. Emerson*.

Preference of truth to life itself, is one's credential to a heavenly society where there are no liars.

"Marriage and Divorce,"* recently published, the subjects are treated, not extensively and in detail, yet with such good common sense, judicious learning, and proper regard for human natural rights, that its author may be recognized, Doctor of Divinity though he be, not as a bondman to Pharisaic traditions, or to Roman Catholic canon law, but as a freeman born into the glorious liberty of the children of God, a teacher of righteous living, whom the truth has made free. Very provocative of thought is it to compare his views, with those of the indis-soluble-marriage Doctors of Divinity. Their contrast is like that of light and darkness, freedom and slavery, concord and strife, heaven and hell, or any other oppugnances. A recent lecture of Rev. Dr. Dix of New York on the same subjects is reported in certain newspapers. He is the rector and a nursing of the ten million dollar-dowered Episcopal Trinity Church, whose consciousness of just and fair dealing is such, in common with that of most other churches, that while it impels its ministers to condemn the marriage and divorce morality of other minded people as good and intelligent as themselves, yet fails to incite church-members to voluntarily pay taxes on their church edifices, and thus share and ease public burdens on their fellow-citizens. Yet Jesus, the second person of the Trinity, whose name designates that church, paid taxes; (Matt. xvii: 24-27) even working a miracle to obtain the money, rather than to be exempted; which voluntary payment is well worthy of imitation by all Christian churches as an illustration of natural, spontaneous, genuine honesty and morality. St. Paul also (Rom. xiii: 6) exhorted to pay taxes and render to all their dues. In the report of Dr. Dix's discourse, to which lecture the *New York Sun* of March 10th gives a column, the reverend doctor speaks "of the inadequacy of his words to express his sense of the perils with which divorce threatens society." Certainly it must be admitted that the Catholic and the Episcopal idea of "society," has not only been threatened, but somewhat shattered even, in its previous experiences under democratic and republican governments; and the rector's inadequate words may yet be lost in silence, when at some future time he shall see a church without a bishop, and a State without a king. He severely condemned the increase of divorce and its legislative permissions, declared it to be the sign of an infidel society, and an outgrowth from the system known as Protestantism. He stigmatized the New England States as the centre of the moral cesspool, and insisted that marriage is not merely a civil contract,

but a divine institution. In similar words, Episcopal bishops and rectors a generation ago, taught that Slavery was a divine institution, gave statistics, and bewailed the escapes of miserable fugitives from bondage, and deplored the enactment of New England anti-slavery statutes, as scattering families and destroying society. Instead of breaking every yoke, and letting the oppressed go free, as inculcated by Isaiah, or avoiding entanglement with a yoke of bondage, as admonished by Paul, they, then upon slaves, as Dr. Dix now would upon unhappy married couples, more tightly ironed the legal shackles. Only one relief would Dr. Dix allow to married persons who find it impossible to live together in peace, where one of them is hard, cruel, brutal and dangerous, and the other is in peril of life; and that alleviation is not a breaking of the yoke, a sundering of the bond; but only separation from bed and board, what in canon law was known as a *mensâ et thoro*. So without the possibility of legal connubial happiness and its pleasant home, must the lonely, misguided and mismated unfortunates, with crushed hearts and withered hopes, every one church-shackled, fag discordantly through their wretched lives.

Divorce a *mensâ et thoro* is a device of the mediæval clergy of the Roman Catholic Church, a stratagem of the canon law, to retain men and women subject to its authority, and according to Dr. Westbrook, "is most unnecessary, and is characterized by cruelty and wrong, and is known to be productive of evils too monstrous to be mentioned. It is a disgrace to the statute book," he says, "of any enlightened State, and should be repealed. To compel a virtuous woman to seek such a separation, attended with so many inconveniences and incidental evils and embarrassments, or to remain in the custody of a cruel, abusive, drunken brute, sharing his disgusting couch, as the bloated wretch returns from his nightly debauch to threaten and outrage her—a torture surpassing the scourging of the lash—is a form of cruelty that cannot be contemplated with calmness. A state that affords no permanent relief by law for a refined and virtuous woman thus suffering, and will not even acknowledge the validity of a divorce she may have been compelled to seek in another jurisdiction, because she could not lawfully get it in her own home, is not worthy to be called a free Christian Commonwealth."—pp. 94, 95.

Dr. Dix, and clerical divorce prohibitionists, call marriage "a divine institution." If they mean by that phrase something above nature, or contrary to it, then Dr. Westbrook does not agree with them, but calls it the sheerest assumption and superstition. He says:

"Marriage had a *divine* origin; so had the laws of gravitation, and chemical attraction, and affinity. What is nature but the work of

* "Marriage and Divorce." By Richard B. Westbrook, D. D., LL. B., author of "The Bible—Whence and What?" Philadelphia: Printed for the author by J. B. Lippincott & Co. 1883. pp. 152. For sale by Colby & Rich, 9 Montgomery Place, Boston. Price 50 cents.

God? What are natural laws but the efficiency and being of God, acting according to principles uniform and universal? God is one and inimitable, and so are his laws. There can be no antagonism between what are called *moral* and *natural* laws. What is natural is divine, and moral; and it is time to learn that marriage (like the Sabbath) was made for man, and not man for some supernatural law of marriage called divine, as opposed to that which is natural."—p. 17.

The divorce regulations which Moses made for the Jews, were apparently deduced from principles such as Dr. Westbrook advocates. Those Jews were a hard-hearted people, consequently Moses made not stringent, but very easy divorce laws for them. This he did under divine supervision. He accommodated the laws to the people, and did not attempt to subjugate the people to the laws. If easy divorce legislation was moral, and good policy, then, to a hard-hearted people, under a theocratic government, is it not equally moral and judicious now-a-days, among a republican people, where even the clergy are hard-hearted, and are no better in morals and education than the well-to-do laity? This point, and others, with eloquence, Edward Quincy, Jr., presses in his very able article on the "Divine Law of Divorce," in *The International Review* for February and March, 1883. He, as do most clear-sighted observers, except "crabbed textuists," sees that "the history of the human race, is its advancement from slavery to liberty, from spiritual and mental, as well as from physical bondage, from the thralldom of creeds, which priests have imposed, as well as from the shackles which despots have welded. One of the citadels of priestcraft, indeed, one of its very Bastiles, is indissoluble marriage." As the privilege of individual judgment and interpretation of the Scriptures, is a cardinal right of Protestantism, Mr. Quincy avails himself of this right. Ingenious is his exegesis of a text which morose college and theological school textualists have endeavored to forge into the service of tyranny. Says Mr. Quincy, "the passage exclusively relied upon to make Christ responsible for the indissoluble marriage doctrine is that in Matt. v. 32, 'Whoever putteth away his wife, save for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced, committeth adultery.'" "What is adultery? Christ has given a definition: He who looketh upon a woman with lustful thoughts thus commits adultery. Christ allows adultery to be a just cause for divorce, and accepting his own definition of that offence, this is all that the most strenuous advocate of all more liberal divorce laws would ask. When a man's love and desires go forth to women other than to her whom the law decrees shall be the sole recipient of them, the contract does not fulfill the end for which it was made, and it is time it should be

annulled." Let it also be remembered, that Christ in said verse, states a doctrine of morals, but gives not here or elsewhere, the slightest intimation that it should be enforced by pains and penalties on any one. His parable was that the tares and the wheat should grow together until the harvest of death.

The turning point of wise divorce legislation, which clerics fail to see, Alexander Dumas indicated when he said that marriage should be made compatible with human conditions, since after all we are only human beings, and dwell on earth, not in heaven. Peter the Great said God established wedlock for happiness, for mutual support, and for consolation in the vicissitudes of life; and as wretched marriages do not sustain God's purpose in matrimony, it is proper in such cases to grant divorce. Montaigne declared the tighter you draw the knot of marriage, by taking away all means of dissolving it, the more you loosen the bonds of good will and affection. Less law would bring more gospel. As legal compulsion in a civilized community should cease, correspondingly would revive the arts and arguments of persuasion and forbearance, and consequently more brotherhood and kindness. Between church-prompted laws, city, town and county laws, congressional and legislative laws, many of which are mere verbal exudations of ignorance, selfishness and bigotry, the people are harassed, and the law is corrupted, as was Egypt under the plague of flies: Yet the clerical divorce prohibitionists are pressing for more laws. Unhappy married couples ask of them for bread, and receive stones; they ask for an egg, and are given scorpions. Let it not be in New England, as Buckle said it was in Scotland, that the people were awed by a few noisy and ignorant preachers, to whom they allowed a license, and yielded a submission disgraceful to the age, and incompatible with the commonest notions of liberty.

Space here allows for only one more extract from Dr. Westbrook's little book, worth more than its weight in gold, and especially invaluable at the present time when clerical selfishness, arrogance, oppression, and other powers of darkness, with Episcopal and Catholic ecclesiasticism, which Huxley describes as "that vigorous and consistent enemy of the highest intellectual, moral and social life of mankind," threaten American civil and religious liberty. The following passage proves that its author recognizes the rights of man, as well as the rights of God, and that he is, in its inmost and best meaning, an enlightened Doctor of Divinity, and not a doctor of deviltry:

"To chain two human beings fast to each other's side, against the perpetual protest of galled and wounded human nature, is an offence at which angels weep. The great indifferent public have no right to say, either on the basis of any statute law or on the deeper basis

of any popular sentiment, or on the still deeper basis of any supposed religious tenet, that any two individuals, man and woman, shall live together as husband and wife, against the inward protest of their own individual souls. Derived from whatever source, based on whatever foundation, sanctioned by whatever tradition, such a legalized tyranny is unworthy of a Christian civilization, shamefully perverts the fundamental teachings of Christianity and destroys the sacred claim of religion to the reverence of mankind."—pp. 106-107.

As Catholic priests insist that a certain blessing of a piece of bread, a chalice of wine, or a cathedral bell, mysteriously and essentially changes, and transubstantiates the natures and *status* of those objects, so certain Protestant ministers will sometimes argue for hours before audiences, as one of them did before the Massachusetts Legislative Committee a year ago, to the effect that marriage is much more than a contract between its parties, as and because it is a *status*; and, therefore, that divorce, in cases of desertion, cruelty and certain crimes by one partner, ought not to be allowed to the other. Marriage is a *status*, but the clerical inference is fallacious. Every contract imports a certain *status*, state or standing of its parties to one another. The contract between master and servant, involves the *status*, that is, the standing, state or relation of the two parties, the one to the other. The master is employer; the servant is employée, and the words "master" and "servant" import the *status*, state or respective relation of the parties toward each other. The *status* of married couples, is that of husband and wife; when this *status* or relation of one to the other ceases, then the marriage *status* ceases and no longer exists.

An argument often used by indissoluble-marriage-bond holders is, that divorce breaks up homes. Of course it does; so also marriages, births, deaths and many other of the evolutions and changes of life, necessitate the breaking up of old homes, and not unfrequently the making of new and often happier ones. Jesus, to whom these "crabbed textuists," when it best suits them, appeal, at times, even at an early age, forsook his home (Luke ii: 42-49); his mother, when about to lose her son, found another home (John xix: 27). In truth, Jesus offered premiums to persons who, under certain circumstances, would forsake their homes, wives, parents and children (Luke xviii: 29, Matt. xix: 29). So, believing, as we do, that,

"Be it ever so humble there's no place like home," yet times and events must necessarily happen, when its inmates must leave the old nest, and seek for or make new ones. Love and affection are the only cements that can build up homes; when these wax cold, homes crumble; threats, pains and penalties cannot reinstate them. Love and affection develop under sunny

skies, in the warm and kindly soil of liberty; not in the frozen, blood-stained caverns of tyranny and theology. For if marriage be for married persons, then their spiritual and physical interests are involved in it. If "it is not good that man should be alone," (Gen. ii: 18) less good is it, that his home should become the abode of bickerings, discords and sanctified crime. Rather in it, should shine forth, individual and domestic harmony, mutual regard, and unselfish devotion each to the other. "The spirit is life." *Rom. viii: 10*. But if mutual affection be dead, the partners, through their spiritual and magnetic repugnances, unwittingly poison and debilitate each other, and not unlikely generate idiocy, lunacy, feeble-mindedness or some life-long bodily weakness, defect, or disease in their offspring. New England people outside of churches, are generally intelligent, are not brutish and do not need the legislative divorce-restraints, pains and penalties, which certain priests and ministers now advocate. In truth, may there not be (as many people believe there is) more genuine, beneficent, (though less pretentious) morality outside, than inside of evangelical churches?

For, as Buckle says, "*Liberty* is the one thing most essential to the right development of individuals and the real grandeur of nations. It is the product of knowledge, when knowledge advances in a healthy and regular manner; but if under certain unhappy circumstances, it is opposed by what seems to be knowledge, then, in God's name let Knowledge perish, and *Liberty* be preserved." *Liberty*, being not simply a means, to an end, but is the very purpose and object of life itself. To the same beneficent end writes John Stuart Mill in his *Essay on Liberty*, pp. 22, 23:

"The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear, because it will be better for him to do so, because it will make him happier, because, in the opinion of others, would be wise or even right. . . . In the part which merely concerns himself, his independence is of right, absolute. Over himself, over his own body and mind the individual is sovereign."

Bolingbroke said: "*Liberty* is to the collective body, what health is to every individual body. Without health, no pleasure can be tasted by man; without *liberty*, no happiness can be enjoyed by society." Wisely did Proudhon say, that *Liberty* was not the daughter, but the mother of order; and equally true is Macaulay's remark, that *freedom* is the only cure for the evils produced by freedom.

"In all wise systems of legislation," writes J. A. St. John (II. Isis, p. 217,) "there should exist a reasonable facility, for divorce, as much at least for the woman's sake, as for the man's. But while the law favored divorce, education should be inimical to it. All the tendencies of society should be to give stability to the unions of affection; all the laws of the State, should favor the dissolution of unions founded on anything else. Wherever marriage is indissoluble, society is compelled to tolerate great corruption of manners; for which reason all Roman Catholic countries exhibit less respect for the marriage vow, than do Protestant countries. Without perceiving it, they, who teach that marriage is indissoluble, only repeat the primitive law, that the two sexes were made indiscriminately for each other. . . . To render marriage a union of love, you must enable it to cease with the feeling on which it is based. An union of hatred is disgraceful to civil society, which thus flies in the face of nature, by yoking together what God intended should exist apart. . . . God is love, and joins only by the links of affection. We are guilty of impiety when we attribute to him those connexions which originate in bare interest, in calculations of conscience, or any consideration whatever, but simple and pure affection."

"For what is wedlock forced but a hell,
An age of discord and continual strife?
Whereas the contrary bringeth bliss,
And is a pattern of celestial peace."

—Shakespeare.

Jeremy Bentham said "a condition requiring the continuance of marriage, notwithstanding a change in the feelings of the parties, is absurd, shocking and contrary to humanity." Equally candid is Alexander von Humboldt's opinion that "marriage having this peculiarity, that its objects are frustrated when the feelings of both parties are not in harmony with it, should require nothing but the declared will of either party to dissolve it." Charlotte Bronte is no less explicit: "When a wife's nature loathes that of the man she is wedded to, marriage must be slavery; against slavery all right thinkers revolt; and though torture be the price of resistance, torture must be dared; though the only road to freedom be through the gates of death, those gates must be passed, for freedom is indispensable." Honor to Charlotte Bronte for the purity of her sentiments, and for her courage in expressing them. If marriage be for offspring, what sin is more unpardonable than for unloving parents to beget children, and thus to perpetuate in their bodies—temples of God—strifes and enmities. Rather, with heroic Charlotte Bronte, escape through the gates of death.

If the Evangelical doctors of divinity and ministers, who now endeavor to influence public sentiment, to the enacting of stringent laws against divorce, sincerely wish, as they profess to do, to follow Jesus in his treatment of marital and sexual offences, let them aid to remove from the statutes, existing penalties for such offences, (penalties productive of greater evils than the offences which they were intended to

prevent,) let them use only kindly assistance, moral and spiritual means, for the prevention of offences, and the reformation of offenders, and say to them, as Jesus said to the adulterous woman: "Neither do I condemn thee; go, and sin no more."* But not unlikely this hint to clerical punishers is useless. The love of domination, the lust for power, to rule other people, has been a marked characteristic of popes, bishops, doctors of divinity, and many rectors, priests, ministers, and the clergy generally. They love preëminence and to be called of men Rabbi, to exercise lordship outside, as well as inside of their churches and dioceses. So also did another once heavenly personage, whose love of ruling others was so morbid, that he avowed it, "Better to reign in Hell than serve in Heaven." Is it not a fundamental error of clerical divorce-prohibitionists in this matter, as also in their other moral reforms, that they take for their infallible standards of right and wrong, the books and traditions of the servitors of an ancient Semitic or Hebrew god? True morality, life-cheering, soul-renovating, and spirit-inspiring, is founded on, and arises from the constitution of man; from knowledge of, and obedience to the laws of one's nature. To the personal attainment of that knowledge, and obedience, *liberty*, the privilege of choice, the right to use or to abuse the object desired—otherwise it is not liberty—restrained only by a just regard for the corresponding equal rights and liberties of other persons, is the essential and all-important prerequisite and condition. The study of man in the bodily, mental, and inmost or divine parts of his nature, corresponding with the Delphic precept, "Know thyself and nothing else too much," reveals to many thoughtful minds, a criterion of truth and moral excellence, more certain and peace-begetting than any book insisted on by Catholic priests or Protestant ministers.

"Know then thyself, presume not God to scan;
The proper study of mankind is man."

Deus est in pectore nostro. The kingdom of God is within you (*Luke*, xvii: 21), and within you is God, not outside, in any ancient book. As before remarked, Justinian taught that justice consisted in living honestly, *hurting nobody*, and rendering to every one his due. The prophet Micah said that to do justly, love mercy, and walk humbly each one before his own God, was good and the only thing Jehovah required of man. Would that the clergy, remembering that their own morality is no purer or of higher grade than that of the average of merchants, mechanics and professional men, and that it is an olden warning, now, among intelligent people, more and more regarded, in view of the

* Words, not coercion, nor penal statutes, were the only means which Jesus and his apostles ever used or recommended in their reforms.

odium theologicum, the narrowness, intolerance, hard-heartedness and malign influence of the clerical profession in past ages, "to beware of the men of one book"—would that they would cease pestering and hampering their fellows with fines, imprisonments and other cruelties, legalized through their influence.

"Churchmen, though they wish to govern all,
Are silly, woeful, awkward politicians;
They make lame mischief, though they meant it well;
Their interest is not finely drawn and tied,
But seams are coarsely bungled up, not sown."

Without intention so to do, they generate much cruelty, cowardice and hypocrisy. Let them proclaim liberty to miserable, mismated captives, and unite with the people in practicing

justice, mercy, and humble worship. They desire a uniform law of marriage and divorce, which shall be one and the same, throughout the United States. Let it not be sought for, by putting on statute-books, any theological dogma or church regulation; but through knowledge of the needs of men and women, respect for their natural rights, and obedience to Nature's laws. Then we may hope the wilderness and the solitary place shall be glad for them, and the desert shall rejoice and blossom as the rose, and true relations of the sexes will arise, lasting as those in heaven, and we may then believe that ministers and priests have aided in promoting harmony and heaven upon earth.

No lawyer of the seventeenth century surpassed John Selden in learning, patriotism and integrity. His motto was: "Liberty above all." He was a member of the Westminster Assembly of Divines, for settling the doctrine, liturgy and government of the Church of England. Clarendon writes of him that he was a person whom no character could flatter, or transmit in any expression equal to his virtue. He was of stupendous learning in all kinds, and in all languages. Coleridge says: "There is more weighty bullion sense in Selden's *Table Talk* than I ever found in the same number of pages in any uninspired writer." There is space enough remaining on this page to quote from Selden's *Table Talk* his remarks on

MARRIAGE.

I. "Of all actions of man's life, his marriage does least concern other people. Yet of all actions of our life 'tis most meddled with by other people."

II. "Marriage is nothing but a civil contract. 'Tis true, 'tis an ordinance of God; so is every other contract; God commands me to keep it when I have made it."

III. "Marriage is a desperate thing. The frogs in Æsop were extreme wise; they had a great mind to some water, but they would not leap into the well; because they could not get out again."

IV. "We single out particulars and apply God's Providence to them. Thus when two are married, and have undone one another, they cry it was God's Providence we should come together; when God's Providence does equally concur to every thing," Yes! to their divorce, if it occur.

THE NATIONAL
DIVORCE REFORM LEAGUE.

AN ABSTRACT

OF ITS

ANNUAL REPORTS,

October, 1885.

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The National Divorce Reform League.

The Executive Committee, having been unable to print the annual reports of the Divorce Reform League from year to year, have caused the following abstract to be made from them and such other sources as the League has at its command.

It is intended to give, in as brief form as possible, a sketch of the organization, needs and aims of the League, together with a short notice of the results already secured by it. We commend it to the careful consideration of those into whose hands it may come.

OCTOBER, 1885.

ORGANIZATION.—This association was formed January 24th, 1881, under the name of the New England Divorce Reform League. Ex-President Woolsey of Yale College was its president for two years, until compelled by age to resign. The name of National Divorce Reform League and a revised constitution were adopted February 16th, 1885, in order to meet the growth of our work west of New England. It is our intention to elect officers from still other states as fast as practicable for successful work. The members now number about sixty, and these have power to add to their list. Its Corresponding Secretary is the Rev. Samuel W. Dike, who is widely known for his researches and writings upon the Family, and whose work as Secretary is under the immediate direction of the Executive Committee.

OBJECT.—The object of the League, as set forth in its constitution, is “to promote an improvement in public sentiment and legislation on the institution of the Family, especially as affected by existing evils relating to Marriage and Divorce. It may co-operate with auxiliary or other bodies having similar aims in such ways as may be deemed expedient.” Its membership includes distinguished representatives of all leading Christian bodies, (including Catholic), and it is conducted upon the principles of catholicity and by methods of practical common sense. It investigates, publishes information, answers

inquiries, makes addresses, gives lectures, directs public opinion, and encourages good legislation. Indeed, it has become a widely recognized necessity to the clergy and the press, to legislators and students of social problems, as its important and increasing correspondence, reaching all over the country, shows. The demand for its work, and the growing feeling of the need of such a literature as it can provide, far exceed its present ability to supply.

THE NEED OF THE LEAGUE. — Some facts will best show this. Connecticut granted 91 divorces in 1849, or, it is estimated, 1 to each 35 marriages of the year. In 1878 the annual average for fourteen years, as given officially, had become 445, or one to 10.4 marriages. Vermont divorces increased from 94 in 1860, to 197 in 1878; those of Massachusetts in the same period, from 243 in 1860 to 655 in 1883, and the ratio from 1 to 51.4 to 1 to 27.8; of New Hampshire from 107 in 1860 to 315 in 1884, or 1 to 10.5 marriages; those of Rhode Island from 162 in 1869 to 273 in 1880, or 1 to 10.2; while Maine for the four years ending with 1882, averaged 534 annually, with a ratio of probably 1 to 11, or possibly 1 to 10. New England entire reached, in 1880, the maximum of 2240 divorces, notwithstanding the considerable reduction in number which legislation had secured in four of these six states. In Ohio the increase was from 837 in 1865, or 1 to 26 marriages, to 1965 in 1883, or 1 to 16; in New Jersey, in four years, from 144 to 183; in New York city, from 212 in 1870 to 316 in 1882; in Philadelphia, from 153 in 1875 to 242 in 1884. Partial reports show that in one-third of the counties in Michigan, in Louisville, Chicago, and parts of Kansas, the ratio has been as high as 1 to 13. We have the official returns for 1884, from more than three-fourths the counties of Indiana, and the ratio was 1 to 10.4. In half of California the ratio to marriage *licenses* was 1 to 7.4. In Arapahoe county, Colorado, (Denver), there were 197 granted in 1883, or 1 to 3.9. And other counties can be found, east and west, where the ratio has been nearly as large. In some it has been even greater. A study of the published lists of names of parties to divorce suits in some large cities at the west shows that some European immigrants quickly learn to avail themselves of the facilities of our divorce laws. And well authenticated reports have been made to us

of the practice, to a considerable extent, among the lowest classes in some of our large manufacturing towns, of voluntary separation and re-marriage to other parties in utter defiance of all law. The last report of "the minister-at-large" in the city of Lowell, Mass., states that out of the 446 families aided by that society the last year, 56 were those of deserted wives. "In the year previous 66 desertions are reported in 420 cases. This is about the usual average from year to year," says the report. Many of these men marry again without divorce, and many live with other women without marriage. In some country districts, the utmost vigilance on the part of the agents of the Pension office is required to prevent fraud under the law which forbids pensions in case of re-marriage. And the lack of a vigorous public sentiment often leads to illicit unions in back country towns.

Such statistical material as we have been able to gather goes to show also a serious increase of crimes against chastity in many sections of the country, of illegitimate births and connected evils, and a decline in the marriage and birth-rate in some of the states. There is reason to think that these evils have contributed much more to the causes of crime, insanity and poverty than is suspected by most people. The official authority on the subject puts the crimes due to licentiousness in England as equal to those caused by intemperance. And some other European authorities give remarkable figures concerning the prevalence of crime and suicide among divorced persons. Without attempting exact estimates, we do not hesitate to say that defective conditions in American homes join with divorce and licentiousness in vastly swelling the volume of crime and intemperance. Statistical inquiry must be pushed in this direction.

Mormon polygamy really presents the problem of the Family. Some of the best authorities have come to the conclusion that the principle of separate families demanding separate holdings of land, and laws of inheritance based on the simple Family, is the key to Indian civilization, and that a better Family is the greatest single need of the freedmen of the south. And that the purification of the city, the preservation of vigorous, pure life in the country town, the security of capital, the best protection of labor, and the most effective work of religion and

education depend on the Family to an immeasurable degree, is coming to be felt as it never has been in the lifetime of the present generation.

To meet these needs we have been strangely unprepared. The loosest of marriage and divorce laws disgrace the statutes of many of our states. Their variety is almost endless. Their conflict is serious. And the ways by which they have often come into being, and been continued and administered are a disgrace to the good name of the American people. But worst of all is the public sentiment that has tolerated them and encouraged their abuse to the alarming degree now prevalent, and which has made almost all efforts at their reform slow and laborious, and often made inoperative all laws designed to protect the moralities and other interests of the Family. We have encouraged the desertion and abuse of wives by these laws and by our neglect to punish crimes against the Home, and have made the Family rest on a mere partnership, often practically dissoluble at the will of one or both parties.

Such was the need for special work. Nothing existed to meet it. There were no good publications for the people, to speak of, and few of any kind. A bureau of information for the clergyman, the editor and legislator, was a necessity. A common channel of communication and a common source of supply which could be used by all who desired was an imperative condition of economical and efficient work in reform.

THE WORK ALREADY DONE. — It is only three years since the League was able to ask the Corresponding Secretary to enter the field upon a salary. *The entire income of the League in that time has been less than five thousand dollars.* Consequently, the Secretary has been asked to give but a part of his time to our work for the past twelve months. We cannot present in tangible form the most important part of the results of our efforts which are already apparent in the wide interest that has been awakened in the subject, and in the improved state of public opinion. But some of the more public work done may be stated, and the evidence of its earlier fruits in legislation can be given.

Two or three improvements in legislation were made before our organization, but in nearly every instance they were

secured by the friends of the League in their own states. The chief legislation since the movement for reform began may be briefly noted. Connecticut repealed its notorious "omnibus" clause, with a marked falling off in the number of divorcés. Massachusetts has made all divorces *nisi*, or conditional for six months, forbade the re-marriage of the guilty party for two years, and provided for the systematic collection and report of Divorce statistics. Maine practically abolished its old law, by which most divorces were granted under a single exceedingly loose clause giving general discretion to the courts, and has substituted for it the several determinate clauses of Massachusetts, adding regulations concerning the re-marriage of both parties. Divorces under the new law, enacted March 13, 1883, have been less than half what they were before. New Hampshire adopted the rule recommended by the American Bar Association, regulating domicile, and made the collection of statistics an official duty; and a restrictive measure passed its Senate in July, 1885, but failed in the House. Vermont first put restrictions on the re-marriage of the libellee, and modified the law of residence, causing a decrease in the divorces of the last five years of 14 per cent. from the number for the five years previous. Recently other, and probably still more effective, legislation, has been obtained. By this latter, all applications must now be filed at the term of court preceding their actual hearing, insuring a delay of six months and making fraud more difficult; and the court is required to compel the attendance of the defendant in person unless this is proven to be impracticable. In Rhode Island, Pennsylvania and Ohio, the governors have repeatedly called attention to the need of reform, and something will probably be done at an early day. The latter state has organized a state Divorce Reform League. Pennsylvania has greatly improved her marriage laws, a work which, it is hoped, other states will take up. Philadelphia and Chicago have better rules of procedure in their courts. Divorces in Chicago are considerably less, in proportion, than formerly. New Jersey and Indiana now collect statistics.

The Department of State, at the request of our Corresponding Secretary, undertook to collect information concerning the social and domestic conditions of the emigrants from Europe to this country. This inquiry will take considerable time longer,

but will probably lay before the government and the people information of the greatest importance.

The officers of the League, and others, asked for and obtained a bill in Congress, providing for the "collection of statistics of, and relating to, marriage and divorce throughout the several states and territories, and in the District of Columbia," for the purpose of getting material for an intelligent opinion on the great question of our conflicting divorce laws, and for its great value in other ways. This passed the Senate unanimously, and was favorably reported in the House of Representatives, but failed to reach a vote before the end of the last Congress. The measure had the support of men of all political parties, and of various opinions on the subject of Divorce legislation as the most desirable plan for getting those facts which are indispensable to any safe legislation or a sound judgment of the subject. It will probably be pressed upon the attention of Congress again at an early day.

GENERAL WORK. — The League has issued a few circulars from time to time, but as yet has printed no other documents for want of means. Besides the general work of correspondence, consultation and a good deal of writing for the newspapers on the subject, the Corresponding Secretary has made addresses in Boston, New York, Philadelphia, Pittsburg, Columbus, Washington, and other cities; in some of them a number of times. He has addressed numerous state and national Christian assemblies, clubs, committees and legislatures. He has given one or more lectures at John Hopkins', at Boston University and Columbia College law schools, in the theological seminaries at Andover, Cambridge (Episcopal divinity school), Newton, Hartford, New Haven, New York and Princeton, and was special lecturer at Andover in 1885 on the Family and Social Problems, giving a course of six lectures. Aside from his strict duties as Secretary, Mr. Dike has published an article in the *Princeton Review* on the Divorce question, of which a reprint of a thousand copies has been nearly all distributed in response to inquiry, and two short articles in the *Homiletical Review* giving material and hints for pulpit treatment of the subject. Four or five articles in other reviews have nearly all been in direct treatment of the Family. A leading publishing house has invited him to prepare a book on the Divorce question,

which will in time put much material into the hands of its readers

Great interest has been awakened in the subject, and many able articles have appeared from various writers in the reviews, magazines, daily newspapers and the weekly press. And there is much study and thought given to the subject. Above all, writers are discussing it more wisely and broadly.

THE PRESENT NEED. — In a single word, it is money with which to push our work, which is yet only well begun. The best efficiency cannot be secured without the expenditure of several thousand dollars annually. Although contributions steadily increased until this year, the League has never had enough in any one year to pay the salary of the Secretary and his expenses. The consequence has been that good opportunities have been lost, our Secretary has not been paid his low salary, and for the year past has been on half-pay, at his own request, in order to reduce the debt of the League, but all the time, as was seen above, doing work almost directly connected with our own in the great field of his special studies. We desire to provide salary, conveniences of office, clerical and other assistance, and publications so that his work and ours may tell to the best advantage. We are evidently at the beginning of the solution of a great problem whose breadth and urgency are just dawning upon a portion of our people only. A singular combination of circumstances makes it a common question for the East and the West, the North and the South. It lies at the root of nearly all that is dearest in property, education, morals, law and religion. Distinguished publicists say that the Family is the most important of all our present national questions. It is coming to the front in England and on the continent of Europe. We trust that the gravity of the case, the need of just such an organization as the League, the catholicity of its aims, the high standing of its officers, members and friends, its remarkable success in the three years of its active work under great difficulties, and the promise it affords of far greater usefulness in the future, will insure its speedy establishment on a sound financial basis. The Christian people of the country certainly cannot fail to recognize its Divine mission, and the call it thus makes for their generous support.

H

" Upon marriage society may be said to be built.

U. S. Supreme Court.

|| The Family is beyond all doubt the most important question that has come before the American people since the War. ELISHA MULFORD, *Author of "The Nation."*

In my view the continuance of our institutions depends on the purity, the sacredness, and the well-ordering of families. Have what public schools you will, enlighten the people as you may, and without the family as formative, and as offering in its spirit the only model of a right government, the permanence of free institutions in any such form as to make them a blessing is impossible. Hence I regard your work and that of the Society with which you are connected as of high importance, in view of alarming facts, and of the present attitude of the Divorce question.

EX-PRESIDENT MARK HOPKINS.

Whether we are to be a thoroughly christian nation, or to decay and lose our present political forms, depends on our ability to keep family life pure and simple.

EX-PRESIDENT THEODORE D. WOOLSEY.

|| In a small compass I can hardly do more than express my deep conviction of the momentous character of the Divorce question and of the value of your labors in connection with it. . . . No revolution would be so tremendous as one which should subvert the family or seriously impair its constitution. The family is even of more importance than the State; the family may regenerate the State, but the State cannot regenerate the family.

GOLDWIN SMITH.

The *Independent* says: "The time has come when the American people should make common cause in correcting this stupendous and flagrant abuse which has gradually crept into the whole divorce system of the country and threatens to sap the very foundations of the nation's life. The statistics on this subject are simply horrible."

The *Christian Advocate*: "Bad as the Mormons are, they are no worse than many divorced persons. A law to give a man more wives than one would not be worse than some laws which give a man the right to put away one wife for a trivial cause and take another."

The *New York Evening Post*: "Probably the greatest impediment in the way of dealing energetically with polygamy in Utah is the condition of popular sentiment about the marriage contract in all parts of the country. In a community in which divorce is so easy and so frequent, the indignation against polygamy does not, in spite of all that is said in Congress, easily become a consuming fire."

The *Springfield Republican*: "The tendency of those who regard the matter seriously as it deserves, is more and more toward the church position that there should be only the ground for divorce that Jesus approved; and though it may not reach as a reforming force absolutely to that point, it will undoubtedly move to a narrowing basis of the causes for divorce and a uniformity of law throughout the states, whether to be attained by a constitutional amendment, or by the slower process of social and legislative action in each state, it is too soon to say."

The *New York Tribune*, in an editorial headed "Organize against Divorce," commending the League says: "Why should not clergymen and all others interested in this question form similar organizations throughout the country? There is plenty of work of a practical kind for them to do. In every state such organizations could do much good."

The *Boston Advertiser*, in its notice of the Princeton Review for March, 1884: "The Rev. Samuel W. Dike's paper on, 'Some Aspects of the Divorce Question,' is the solid and thorough article of the number."

The *Congregationalist*: "Why will not some one or more wealthy person endow Mr. Dike as a sort of general lecturer and writer on the Home and Family? Hardly a professorship in the country would be more useful."

The *Boston Herald*: "Rev. Samuel W. Dike, has been the corresponding secretary from the start, and has already become our highest American authority on questions pertaining to divorce, the family and the proper organization of society. Mr. Dike's papers in the leading reviews on these subjects, and his position as special lecturer at the Andover Seminary on social institutions, indicate both his ability as a writer and the confidence felt by others in his capacity to deal with some of the most important ethical questions of our own time. The enlargement of the League from a New England to a national organization will be gradually accomplished, and the fact that the outlook is hereafter to be national, not local, will greatly facilitate its work and increase its usefulness."

The *Christian Union*: "We need not tell our readers that this work has our warmest regard. Our columns have borne frequent testimony to the value of it and to its remarkable success."

REFERENCES TO THE LITERATURE OF THE DIVORCE QUESTION, AND TO THE GENERAL SUBJECT OF THE FAMILY.

The following references are given to meet inquiries that are constantly made for the sources of information on these topics. This list is, of course, purposely incomplete and confined to authorities in our own language, as it is also to those which will by their own references lead to others. Those containing the more recent, brief and accessible statistics and discussions on Divorce are named first: The abstract of the reports of the League will be sent to all applicants without charge. Those marked with a star, and only those, can be obtained for the price affixed, by addressing REV. SAMUEL W. DIKE, ROYALTON, VT.

THE DIVORCE QUESTION.—Abstracts of reports of the National Divorce Reform League, with constitution, officers, statement of objects etc., pp. 12.* Some aspects of the Divorce Question: An article by Rev. Samuel W. Dike, reprinted from the Princeton Review of March, 1884, 8 cts.* Contains brief outlines of statistics of divorce in this country and Europe, with discussion of the relations of the subject and of the remote causes of the evils.

Important Features of the Divorce Question. Two short articles by the same in the Homiletical Review, for October and November, 1885, giving facts and points for pulpit treatment and for the use of ministers and students. Reprinted pp. 12, price 8 cents.* This and the two issues above may be used as introductory to the larger study of the subject and the work of the League which, it should be understood, is not responsible for opinions expressed in this or any other of the publications on this list.

Divorce and Divorce Legislation, especially in the United States, By Ex-Pres. Theodore D. Woolsey, revised edition of 1882, pp. 328, Scribners: New York, 1.50, especially valuable for its historical and critical review of Divorce in Europe and the United States, and for its discussion of Divorce in the New Testament. Some of the other books from the Christian position are: The Scriptural Law of Divorce, By Alvah Hovey, D. D., LL. D., pp. 60, Bap. Pub. Society, Boston; Fulton on Laws of Marriage and Divorce, pp. 270, Young and Co., N. Y.—a learned digest of the Canon and other ecclesiastical law; Hugh Davey Evans on The Christian Doctrine of Marriage, Hurd and Houghton, Boston: Husband and Wife, By George Z. Gray, Dean of the Episcopal Divinity School, Cambridge, Mass. pp. 120, 1.00, Houghton, Mifflin and Co., a remarkably fresh and suggestive discussion of the nature of Marriage and Divorce under the main purpose of treating the essential point in the proposed English law allowing marriage with a deceased wife's sister. The standard doctrinal statements of the Churches, rules of discipline, and treatises on ethics, especially translations of the German writers—Wuttke, Luthardt, Martensen, and Lotze, Maurice's Social Morality and Mulford's Nation, should be consulted on Divorce and also on the Family.

Statistical reports and statistical journals, American and Foreign, are beginning to deal with the subject, but as yet imperfectly and on too narrow a basis. Among American sources are the following: Registration, Health Bureaus of Statistics and other reports of Massachusetts and Rhode Island, are especially full of material on marriages, divorces, births, etc., and those of Connecticut, Vermont, New Hampshire, New Jersey, Ohio and Indiana have more or less statistics; probably the coming report of Rev. F. H. Wines on criminal classes, in the United States Census, will be valuable on this subject; the leading Reviews, and files of the Independent and Nation; a paper of Dr. E. Jarvis in New England Genealogical Register of 1884; various papers by Dr. N. Allen of Lowell, Mass.; one by Prof. H. R. Storer, M. D., in the American Journal of Science and Arts for March, 1867—rich in statistics and references on the birth-rate of Europe and this country:—two papers on Divorce and one on Moral statistics in Journal of Social Science, November, 1881; and reports of some city benevolent societies and other charities, and asylum reports etc., contain a small part of the material they should furnish.

The eighth of the Boston Monday lectures for 1880-81, in the volume—Christ and Modern Thought, on Facts as to Divorce in New England, by Rev. S. W. Dike may be read for the direction it gave to the present discussions of the subject and for some statistics on sexual crime and vice.

The leading books on the Laws of Marriage and Divorce, decisions of courts etc., are Bishop (6th Revised Edition) two volumes, Brown, Schouler and Stewart. The latter is a remarkably complete and handy digest. Story and Wharton on Conflict of Laws, Woolsey's Political Science, Lieber's Political Ethics, Amos' Science of Politics, Bagehot's Physics and Politics, Holland's Jurisprudence, the writers on the State and on the philosophy of Law, articles in the Encyclopedia, Married Women's Statutes and their result on Divorce, pp. 29 by Jona. Smith Esq., Clinton, Mass., discussions of Woman's Rights, etc., are of this class.

THE FAMILY. A few references on this subject are given in addition to the above. All the writings bearing on Social Institutions contain much scattered material, but of highest value. Of the *Historical* school of writers, the works of Sir Henry S. Maine, viz., Ancient Law, Village Communities, Early Law and Custom, Early History of Institutions, Popular Government—now in press, and DeCoulanges' Ancient City stand first in value. Hearn's Aryan Household, Sir Alfred Lyall, Nasse, Stubbs, Freeman, Denman Ross and other writers on Early Aryan and Teutonic Institutions, papers in the Johns Hopkins' University Studies in History and Political Science, the histories of Greece and Rome and other Countries, Lecky on Morals in Europe, Lee on Celibacy, Draper's History of Civilization and those histories of Europe and the United States which treat most of social life, are highly useful and will contain references to others.

The leading authorities of the *Evolutionary* School should be read carefully and compared with the opinions of Maine and others. L. H. Morgan's Ancient Society, McLennan, Herbert Spencer, Tylor, Lubbock, the Reports of Major Powell and others of the Bureau of Ethnology and the Smithsonian Institution are the chief authorities in this class easy of access to general readers.

No good book on the Family exists in the language. But the student is recommended to take the Family as his working line and trace it in the Scriptures, and in the history of ethical, economic, legal, political, philosophical and religious life and thought, for the bearing of each and all upon the Individual and the Family. Karl Hillebrand's German Thought in Europe, Toynbee's Industrial Revolution, a volume entitled Essays in Philosophical Criticism edited by Seth and Haldane, Miller's Philosophy of Law, Individualism by Bishop Littlejohn, Christianity and Civil Society by Bp. Harris, Democracy in France by Pres. C. K. Adams, are suggestive, though not all well known, books of this kind. Ely's Past Present of Political Economy, Carroll D. Wright on Political Economy and the Labor Question, the article on Political Economy in the Encyclopedia Britannica may be named as useful.

Reports, debates and articles on Mormon Polygamy, the Indians, Chinese labor, the social condition of the South and of great cities, on Socialism in its various phases and on Property questions generally.

A series of four papers in the Andover Review for August, 1884 and January, June and September, 1885 by Rev. Samuel W. Dike, under the general title of the Religious Problem of the Country Town treat largely of the Family. The third is especially given to the Family in the work of Education and Religion, making some practical suggestions. The fourth is an attempt in part at a new historical explanation, from a study of social institutions, of the present relations of the Church and the Family. Christian Thought: New York, for 1886 will contain a lecture delivered at the school of Christian Philosophy on The Family in the history of Christianity—a plea for the re-examination of the grounds of current opinions on the historic relations of the two, with some applications to practical questions.

A book on the Divorce Question, to be published by Funk and Wagnalls, New York, is in preparation by Mr. Dike.

✦ CONSTITUTION ✦

— OF THE —

National Divorce Reform League.

ARTICLE I. This Association shall be called the NATIONAL DIVORCE REFORM LEAGUE.

ART. II. Its object shall be to promote an improvement in public sentiment and legislation on the institution of the Family, especially as affected by existing evils relating to Marriage and Divorce. It may co-operate with auxiliary or other bodies having similar aims in such ways as may be deemed expedient.

ART. III. It shall consist of the following persons, having power to fill vacancies and to add to their number:

ART. IV. The officers of this Society shall be a President, not more than five Vice Presidents, a Recording Secretary, a Corresponding Secretary, a Treasurer, and an Executive Committee of not more than twelve persons, of which Committee the Corresponding Secretary shall be a member, and of which not less than three shall constitute a quorum, having the duties indicated in their several offices: to be elected at the annual meeting, and to hold office until their successors are appointed.

ART. V. The LEAGUE shall hold its annual meeting on the first Wednesday in January, unless otherwise directed by the Executive Committee, and at such hour and place as shall be indicated in the call of the Committee.

ART. VI. Amendments of this Constitution, of which due notice shall have been given in the call of any annual meeting, may be adopted at such meeting by the vote of two-thirds of the members present.

ALL COMMUNICATIONS concerning the work of the League and its general business should be addressed to the Corresponding Secretary, REV. SAMUEL W. DIKE, ROYALTON, VERMONT.

CONTRIBUTIONS should be sent to the Treasurer, W. G. BENEDICT, ESQ., 132 FEDERAL STREET, BOSTON, but may also be sent to the Corresponding Secretary.

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6

THE NATION'S SIN AGAINST MARRIAGE

We are not half awake to the fact that by our laws of divorce and our toleration of the social evil, we are doing more to corrupt the nation's heart than Mormonism, ten fold.—PROF. AUSTIN PHELPS.

REVEREND AND DEAR SIR :

Your attention is respectfully called to a resolution of the New England Divorce Reform League, adopted at its annual meeting in Boston, February 8, 1882. It is substantially as follows :

“ The corresponding secretary is instructed to address a circular to every clergyman in New England to whom the proclamations of the several governors are sent, asking that sermons be preached by them on the approaching Fast Day, or in case ecclesiastical arrangements require other topics on that day, or public services are not held that day, then on the nearest suitable Sunday, *upon the sins of our people*, NOT ONLY IN UTAH, BUT THROUGHOUT THE NATION, *with respect to the* MARRIAGE

TIE; *the imminent danger therefrom, and the urgent need of a thorough reform.*"

In behalf of the League, I respectfully ask that, if practicable, you comply with this request, and direct the attention of your congregation to these great evils of *polygamy and sinful divorce*, which are not only flagrant violations of the principles of our Christian religion, but also subversive of the morals of the people and of the foundations of our republican institutions.

Let every Christian minister in New England, as near the day designated as may be consistent with the ecclesiastical arrangements or customs of his people, set forth the evils in question, especially those within our own borders, and instruct his hearers in those truths and principles which shall lead to reform.

I am, very respectfully,

Yours in behalf of the League,

SAMUEL W. DIKE,

Corresponding Secretary.

ROYALTON, VT., March 7, 1882.

By direction, brief statistics of divorce are appended, together with some references to the literature of the subject:

STATISTICS.—In the year 1878, Maine granted 478 divorces; New Hampshire, 241; Vermont, 197; Massachusetts, 600; Connecticut, 401; Rhode Island, 196: Making a total of **2,113**. Maine granted 510 in 1880, and Rhode Island 246.

The ratio of divorces to the marriages of the year in States furnishing a record of both, has been as high as 1 to 13.5 in Vermont; and 1 to 9.2 in Connecticut. It is now 1 to 9.7 in Rhode Island, and in twenty years has risen in Massachusetts from 1 in 51 to 1 in 21.

The ratio of divorces to population is largest in Maine. New Hampshire and Rhode Island, however, closely approach the rate in that State.

The number of divorces in New England has probably more than doubled in twenty years. Meanwhile, judging by Massachusetts, crimes against chastity and illegitimate births have greatly increased, and marriages in proportion to the population have declined.

Less than one-fourth of these divorces are granted for adultery. Large numbers are collusive and granted for the most frivolous reasons. Many are obtained by fraud. Cases of criminal polygamy are frequent, Massachusetts alone convicting nearly a dozen of this crime each year; while persons are frequently known to have two, three and even four divorced husbands or wives living. The influence of these practices has so corrupted society that, among some classes, matrimony is very commonly regarded as a temporary arrangement dissoluble at the will of the parties. The sacredness of marriage, and the permanence of the Family, are in grave peril. And the indications show that the evils of divorce are increasing in the West and at the South.

REFERENCES.—Divorce and Divorce Legislation. Theodore D. Woolsey: Scribners. Revised Edition of 1882. Price, \$1.75. The standard work. Comprehensive in history and discussion, and full of statistical information.

Others are: Boston Monday Lectures for 1880–81. Roberts Bros., Boston: \$1.50. Lecture viii. "Facts as to Divorce in New England," by S. W. Dike, giving outline of statistics and discussing the bearing of divorce upon other questions and on the Family. ARTICLES: In the *Century* for January, 1882, with note of correction in March number, by W. Gladden; in the *North American Review* for June, 1880, by Nathan Allen, giving tables for four States and pointing to physiological causes of divorces; in the *The New Englander* for March, 1882, by same, treating further of the physiological causes. *Journal of Social Science* for November, 1881, A. Williams & Co., Boston: Price, one dollar. Papers read at Saratoga; one by W. C. Robinson on "Diagnostics of Divorce"—a valuable discussion of the social causes of divorce—and one by S. W. Dike, on "The effect of lax divorce legislation upon American institutions," indicating

dangers to our political institutions ; in the *Independent*, (N. Y.) of February 16, 1882, on "Certain crimes in Massachusetts," by S. W. Dike, showing the increase of crimes against chastity in Massachusetts and its parallelism to the increase of divorces in that State.

THE NEW ENGLAND DIVORCE REFORM LEAGUE is composed of gentlemen from all leading Christian bodies, both Catholic and Protestant, and aims "to promote an improvement in public sentiment and legislation on the subject of divorce." Its officers are :

Rev. THEODORE D. WOOLSEY, D. D., LL. D., *President*.

Hon. JOHN D. LONG,
Hon. ISRAEL WASHBURN, Jr., } *Vice Presidents.*

Rt. Rev. BENJ. H. PADDOCK, Boston, Mass.,	} <i>Executive Committee.</i>
Rev. G. L. DEMAREST, Manchester, N. H.,	
Rev. M. H. BUCKHAM, Burlington, Vt.,	
Hon. J. L. CHAMBERLAIN, Brunswick, Me.,	
Prof. W. C. ROBINSON, New Haven, Conn.,	
Rev. GEORGE HARRIS, Providence, R. I.,	

Rev. GEO. A. JACKSON, *Recording Secretary*,
Swampscott, Mass.

Rev. SAMUEL W. DIKE, *Corresponding Secretary*,
Royalton, Vt.

WILLIAM G. BENEDICT, Esq., *Treasurer*,
132 Federal Street, Boston.

7

THE PROPER ATTITUDE OF OUR MINISTERS AND CHURCHES IN REFERENCE TO THE DIVORCE LAWS OF CONNECTICUT.

7

BY REV. EDWARD E. RANKIN OF FAIRFIELD.

PREFATORY NOTE.—This paper was prepared to *open* and not exhaust a discussion in which others were to take part. The writer had brief time allotted him and sought only to present the outlines of the question proposed. To the essay of ex-President Woolsey of Yale College, he earnestly directs the attention of all who would become acquainted with this whole subject.

The institution of marriage bears such important relations both to Civil Government and to the Church of Christ that each of these recognizes and controls it.

To the former it is serviceable as the basis of a pure and well ordered society, and the rights pertaining to it and arising from it are guarded by legislative enactments. The Church agrees with the State in deeming marriage an essential element of civil and social peace, industry and prosperity. It goes farther than the state when it recognizes a Divine sanction for its foundation and Divine laws that are to govern it. The churches, whose duty we are to discuss, although not admitting that Marriage is a sacrament, do claim for it a higher and holier position than that of a mere civil contract. In their esteem this place is assigned to it by the clear revelation of God who has brought it in respect to its formation, control, and permanence, within the scope of his Sovereign authority.

We look back to the origin of the family and see the Lord providing man the help meet for him. We trace His Providence in the mutual adaptation of husband and wife for all the purposes of comfort, communion and increase. We hear His voice amid the awful scenes of Sinai forbidding unfaithfulness to the marriage vow. We trace His teachings in the similitudes of the Old Testament where human espousals are made to represent the near relations of God to his chosen people and

in the later covenant we find marriage employed to image forth Christ's endearing union with the church unto which He communicates His spiritual life.

Upon such grounds as these and others like them, our churches claim that marriage is not merely a civil contract; that it rises to the height of a God appointed ordinance, and claims for its continuance the Divinely worded caution, "What God hath joined together let not man put asunder."

In thus setting forth our sentiments as Christian churches upon this sacred relation, we do not forget the weighty responsibility resting upon the State, nor would we deem it wise nor right for the Civil Government to abstain from legislation upon a subject so important to its well being. We believe that the interests committed to the political body are of such a nature that both the entrance and the exit of the married state must needs come under its supervision and control. We do not, therefore, raise any objection to divorce laws where they are just and proper, and where they are justly and properly administered. Further, we will not withhold proper respect nor loyalty from our government, although upon its code are statutes which we believe to contravene the divine will. We will concede, for example, the legality of a marriage and the legitimacy of offspring from it, although according to the Divine law we must characterize that marriage as adulterous. In doing this we take no responsibility further than that which pertains to our civil

relations. But when we are found giving official sanction as ministers, or saying God speed as churches, to those who disobey the rules of the divine Master, although their action is clearly sanctioned by human law, then do we indeed become partakers of other men's sins.

The principles thus enumerated bring us directly to the question before us : the proper attitude of our ministers and churches in reference to the divorce laws of Connecticut. The earlier legislation of the state declares adultery and desertion just occasions of divorce. Fraudulent contract is later specified, but this in its nature makes a marriage covenant void from the beginning. To the above named and protracted absence there were added in 1843, habitual intemperance and intolerable cruelty. The law as it was revised and amended in 1849, and as it now stands in our statutes, contains these provisions, which are the only ones we need to consider. "The superior court shall have exclusive jurisdiction of all petitions for divorce, and may grant divorces to any man or woman for the following offences committed by the other party, to wit :—Adultery, fraudulent contract, wilful desertion for three years, with total neglect of duty ; seven years' absence during all which period the absent party has not been heard from ; habitual intemperance, intolerable cruelty, sentence to imprisonment for life, any infamous crime involving a violation of conjugal duty and punishable by imprisonment in the state prison ; or any such misconduct as permanently destroys the happiness of the petitioner and defeats the purposes of the marriage relation." "The party aggrieved may prefer a petition to the superior court (notifying the defendant to appear) and on proof of the allegations, said court may grant a divorce and declare the petitioner to be single and unmarried ; and the parties divorced may then marry again."

In that essential portion of the laws which has been cited these things are

to be noted :—First, no provision is made for a modified separation (*amensa et thoro*) such as obtains in some other states. The divorce granted is absolute and total. Second, no punishment is inflicted upon the guilty party unless we consider the decree of a portion of the husband's estate, and that not to exceed one-third, to be applied to the wife's support, as in the nature of a penalty. Third, each party, whether guilty or guiltless, may at once enter into a second engagement of marriage ; and fourth, the grounds of complaint are so many and in the last clause of the section so indefinite that they must of necessity encourage the application for divorce, and facilitate its success.

In view of these statements we hold that every Christian man is bound to take the attitude of a remonstrant against laws which, in their far reaching influence debase the morality and tarnish the fame of the commonwealth. Not only as a member of the church but in his civil and social relations he is deeply concerned in all that relates to the maintenance of what is pure and lovely and of good report.

Professing to be governed in his own life by the purifying precepts of the gospel, a constraining obligation presses upon him to have their power go forth in every department of influence and activity until they pervade the counsels of the legislature and the sentiments and life of the people.

Apart from any consideration of the specific teachings of the gospel in relation to this matter, the facts presented by the action of our courts are sad and appalling. In the *New Englander* for July, 1866, Mr. Loomis has presented some statistics upon which President Woolsey, in his able treatise on this whole subject, enlarges and comments. From these authorities it appears that as a result of our present laws the ratio of divorces to marriages in this state is double what it is in Vermont, nearly four-fold that in Massachusetts, and much more than double that in Prussia. There are absolutely more

divorces in Connecticut on the average by 108, namely 364 every year, than in Massachusetts, a state with two and a half times as many inhabitants. There were in 1866 more than half as many as in Ohio, a state with almost five times the population.

For several years, writes Dr. Woolsey, one divorce has taken place to about ten marriages. Deduct now the Catholics, deduct also the better class of society, than whom a class more observant of the family tie exists nowhere on earth, and we shall conclude that out of every seven couples that call themselves Protestants, one will be divorced and two-thirds of the divorces will occur in less than six years after marriage. If, as the above cited writer states, the present law must bear the burden of this social immorality, we have surely occasion to lament its existence. Bound as we are to seek the true peace of the people among whom we dwell, we cannot witness this frequent disruption of the domestic tie without employing what moral, social and political power is given us to re-establish the purity of the family relation.

One means to this end has been already suggested in the reference made to those civil and social obligations resting upon Christian people. We cannot believe that our laws of divorce represent the true sentiments of the inhabitants in this State. A subject so important to our best interests ought not to be left out of the account in the choice of our legislators.

Again, the publications to which allusion has been made, suggest how powerfully the press in the hands of good men may subserve the cause of social morality.

The discussion upon which by direction of this Conference we have now entered affords an example of one other method of promoting principles that shall lead to right action. From some ecclesiastical bodies there have gone forth commands directing the course to be pursued with respect to this subject by the ministers and churches

connected with them. Our clerical and church councils claim no such control, but we may and ought to speak words of advice that may reach and influence our people and through them the community of which they constitute an important part.

Petitions to our legislature have aforetime been sent and may be repeated, thereby setting forth our desire for the abrogation of laws which we deem subversive of domestic honor, peace and purity.

In the instructions of the pulpit, also, the sacredness of the family relation claims attention from those who expound the word of God.

Milton, in his famous treatise on Divorce, which is pervaded by the spirit of rationalism, and wherein his glosses of the sacred oracles are made subservient to his own imperious will, gives the title of "crabbed textualists" to those who interpret Scripture as we must needs do; but this reproach is easier to bear than that which is poured from a higher source upon those who handle the word of God deceitfully.

If, as appears to have been taken for granted, the people of our State can endure no stricter enactments than those we have; if thus like the ancient Hebrews, we must suffer these, because of the hardness of our hearts, then is it time that the moral influence of our churches should be brought to bear upon those who dwell within the shadow of our sanctuaries and with whom we mingle in our social relations.

The degraded sense of the nature of marriage obligations which our laws, and the effects flowing from them alike indicate, ought to quicken within the memory of all Christ's disciples the meaning and application of his words, "Ye are the salt of the earth."

Passing beyond these general suggestions we come to look upon the practical relations into which these divorce laws may bring the church in its organized state, and the ministry in their official capacity. The church accepts the teachings of the New Testa-

ment as its imperative law, and it must deal with its members solely under the sanction of that law.

It is a fact demanding our most earnest notice that Christ, who declined to interfere directly with the political or social relations of men, appears to go out of his way to legislate upon the family connection. Not alone to the tempting Pharisees, but to the inquiring circle of friends and believers, he spake the words which, according to the best interpreters and in accordance with the sentiments of the large majority of Christian people, furnish the only ground upon which divorce has the divine sanction. No Christian church can properly find cause for discipline where a wife in her membership, wronged by the adulterous conduct of her husband, obtains legal release from him and marries another man. It need scarcely be added that if she were the offending party the church cannot be guiltless unless it inflicts the extremest censure both for her previous crime and her subsequent sinful action. St. Paul's words (1 Cor. 7:15), "If the unbelieving depart, let him depart: a brother or sister is not under bondage in such cases," have been applied in cases not contemplated by the apostle. In all ages since they were written they have been deemed by some as authority for counting desertion a sufficient ground of divorce, and thus have given this part of our statutes an authority it would not otherwise have had. The fact that some conscientiously receive this interpretation might make discipline in such cases an act of doubtful propriety, and I will not attempt to pronounce upon it.

With respect to divorce founded upon other grounds, and such as are clearly acknowledged as unscriptural, there

can be no doubt. A member of one of our churches appeals to the court and asks for a divorce from his wife, not because of any moral defilement, but simply on the ground that her conduct is such as to make him unhappy. The forms of law are complied with, and the court decrees him a single man and competent to marry again. He takes to himself another wife the same day, it may be, or ten years later, in both cases the principle is the same, and then comes to the Lord's table. He has appealed unto Cæsar and obtained from the civil government a complete sanction for his act. Now when we ask what duty the church has in such a case, how can we hesitate one moment in the answer.—This church member has not rendered unto God the things that are God's. He has defied the clear teachings under which the church must act, and her only course is to excommunicate him for the crime of adultery. The application of this case and all others like it to the ministry is manifest. The pastor is not a magistrate, and if he were, and as such compelled to sanction such a union, he must resign either his civil or ecclesiastical commission. It is not left to the minister's discretion to choose whether he will take part or not in violating the divine law. He cannot join together those whom God has not joined. His refusal may grate painfully upon his own feelings and those of others. It may surround him with enemies and make him an exile from his parish. Yet he must obey God speaking through the word to his conscience. By his refusal to celebrate the marriage rite he maintains his high prerogative as an ambassador of the King of kings, and through this refusal in the name of the Master he forbids the bans.

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DIVORCE IN MASSACHUSETTS.

AN EXTRACT FROM THE FORTY-FIRST REGISTRATION REPORT.

BY

FRANK WELLS. M. D.,

EDITOR OF THE REPORT.

Mean Monthly Temperature (Fahrenheit), 1877-1882.

MONTHS.	BOSTON.					
	1877.	1878.	1879.	1880.	1881.	1882.
January, . . .	23·2	27·6	23·9	34·8	21·9	26·4
February, . . .	32·5	29·1	23·6	32·0	27·7	30·4
March, . . .	34·4	39·4	33·4	32·8	36·4	35·3
April, . . .	43·9	47·2	42·2	46·2	42·8	42·0
May, . . .	55·2	55·7	59·9	62·6	54·9	49·8
June, . . .	66·8	64·1	64·1	67·3	60·6	65·9
July, . . .	70·1	72·9	70·0	70·1	68·5	71·7
August, . . .	71·0	67·8	68·1	68·9	69·5	69·7
September, . . .	63·9	63·1	60·7	64·1	65·7	62·7
October, . . .	50·8	54·9	56·0	50·9	53·3	54·6
November, . . .	40·2	39·7	39·2	37·1	42·4	37·9
December, . . .	35·0	29·5	32·4	25·8	37·8	30·5
Average, . . .	49·2	49·3	48·0	49·6	48·5	48·1

DIVORCES.

4 DIVORCES IN MASSACHUSETTS.—1863–1882.

The subject of divorce is one which should be properly studied in connection with that of marriage, but owing to the unavoidable delays attendant this year upon the compilation of new statistics, it has become necessary to present the matter in a supplementary form.

The late date, upon which the act providing for the return of divorces was passed, must be an excuse for whatever faults may be thought to exist in the method of tabulation. The statistics, however, are reliable; since, for the years previous to 1879, they were gathered directly from the dockets of the courts by a force especially detailed from the Bureau of Statistics of Labor, to which Bureau acknowledgment is duly made for the assistance rendered in the preparation of this Report. For the years 1879–1882 the clerks of the courts have made their returns upon blanks framed in accordance with the law. In a few instances the chief cause for divorce was not made prominent in these returns, and as it was deemed advisable to tabulate simply the statute causes, the multiple specifications have been reduced sufficiently accurately to the nine legal grounds for which divorce may be granted.

In a very few cases *nisi* decrees have been returned as absolute—the number, however, being so inappreciably small that the results have been in no wise materially affected.

HISTORY OF DIVORCE LEGISLATION.

The statistics of divorce have assumed an unusual importance in discussing the social condition of the people, from the fact that the numbers have so strikingly increased during the past twenty years. Hence it is necessary to briefly review the

history of the legislation upon this subject, in order that an intelligent analysis of the following tables may be made.

The first statute relating to divorce was passed on March 16, 1786 — five and one-half years after the first legislature had met under the Constitution of Massachusetts. This act provided that a full divorce, or divorce from the bond of matrimony, might be granted for two causes only, viz., adultery and impotency; while a limited divorce, or divorce from bed and board, might be decreed for the additional cause of extreme cruelty. By an act passed in 1810 a limited divorce was authorized to the wife, when her husband had utterly deserted her, or had grossly or wantonly and cruelly neglected or refused to provide sufficient for her maintenance.

In 1836 it was enacted that sentence of imprisonment of either party at hard labor, for a period of seven years or more, should be added to adultery and impotency as a cause for full divorce; while limited divorce might be granted to either party for extreme cruelty or utter desertion, and to the wife for wanton, cruel and gross refusal or neglect on the part of the husband to provide sufficient maintenance for her.

By the Acts of 1838 wilful and utter desertion for five consecutive years became an additional cause for full divorce in favor of the innocent party; while in 1850 it was still further provided that full divorce might be decreed to either party, when the other separates therefrom and joins, and for three years remains united with any religious sect or society, believing, or professing to believe, that the relation of husband and wife is void and unlawful.

No further legislation upon this subject took place until the general revision of the Statutes in 1860. In this year the General Statutes authorized full divorce for adultery, impotency, union for three years with a religious sect denying the validity of marriage, imprisonment at hard labor for five years, and desertion for five consecutive years to the deserting as well as to the deserted party. In the latter case a proviso was introduced limiting divorce to the deserting party, only after it had been shown that the desertion was for extreme cruelty, or, in case of the wife, neglect by her husband to provide. By the same Statutes, limited divorce might be granted for extreme cruelty, complete desertion, gross and confirmed habits of in-

toxication contracted after marriage, cruel and abusive treatment, and in favor of the wife, for neglect on the part of the husband to properly maintain her. The chapter also retains the provision of 1857, by which a limited divorce may be made absolute, on petition of the party to whom the original limited divorce had been granted, after a separation of five consecutive years, and on the petition of the guilty party after the separation had continued for ten consecutive years.

In 1867 it was enacted that all divorces might be decreed *nisi*, which *nisi* decrees might be made absolute, in the discretion of the court, after the lapse of six months. By the Acts of 1870 all limited divorces, from bed and board, were thenceforth prohibited; all pending libels for limited divorce were to be considered as libels for full divorce, and all existing decrees for limited divorce were to be treated as *nisi* decrees under that law. Further, all the causes specified in the preceding paragraph, for which limited divorce had previously been provided, were thereafter to be considered as causes for full divorce, provided that in these cases decrees *nisi* should first be entered, which must be made absolute upon proof that the parties to the libel had lived apart for five consecutive years, and might be so made in the discretion of the court after the lapse of three years. Thus, in 1870, there were nine causes for which absolute divorce might be granted, except that in four of them a *nisi* decree must remain three years at least, before being made absolute.

In 1873 divorce *nisi* was prohibited, except as provided by the Statute of 1867, as mentioned in the preceding paragraph. The Acts of this year also decreed that thereafter a full divorce might be granted for all causes for which a *nisi* decree was then warranted; provided that, in the case of desertion, a complete separation should have existed for three consecutive years next preceding the filing of the libel. The law still further provided that a *nisi* decree might at once be made absolute, except in the case of desertion, when a separation for at least three consecutive years must have existed. It was also enacted by this law, that full divorce might be granted for gross and confirmed habits of intoxication, no matter at what period, whether before or after marriage, this habit had been contracted. By this enactment, then, there were nine causes for

which full divorce might be granted, except that desertion must have continued three years, while in any case a *nisi* decree might be entered by the court for six months.

In 1874 an act was passed which provided that all decrees of divorce must be rendered absolute and not *nisi*, whenever personal service is made on the libellee, or when the libel is entered at a term previous to the one in which the decree is granted. A further provision of this same act relating to *nisi* decrees was declared unconstitutional by the Supreme Court of the State; and consequently in 1875 it was enacted that any limited decree, or any decree *nisi*, might be made absolute after a separation of three years, upon the petition of the innocent party, and after five years upon the petition of either.

Finally, by an act passed in 1881, it was provided that all decrees for divorce must be first entered *nisi*, to become absolute after the expiration of six months from the entry thereof, on application of either party to the clerk of the court, unless the court has for sufficient reason, upon application of any party interested, otherwise ordered. This same act decreed that the court, before which any libel for divorce is pending, may, without entering a decree of divorce, continue the same upon the docket from time to time, and during such continuance make such orders and decrees concerning a temporary separation, the separate maintenance of the wife and support of minor children, as may be deemed necessary.

In 1877, the provision of the General Statutes, authorizing jury trials in divorce suits, was repealed; and in 1881 it was enacted that in all cases where a divorce had been granted for adultery or other criminal offence committed within the State, and within the time provided by law for making complaints and finding indictments, the court granting the divorce may cause the district attorney to be notified, who shall then cause complaint to be made before the proper magistrate, or a presentment to the grand jury.

In view of the facility with which a divorce may now be obtained — a facility which no one, who has studied the subject can fail to recognize as having been steadily increased through the whole history of the legislative enactments, it will be of interest to consider very briefly the changes in the laws relating to subsequent marriages. In 1841 a statute was passed pro-

hibiting the guilty party, in all cases of divorce, from marrying while the innocent party was alive.

In 1853 it was enacted that, in cases of divorce for desertion, the court might permit the deserting party to marry again, and in 1855 the statute of 1841 was repealed, and a new one enacted, authorizing the court to allow the guilty party to marry again in all cases, except when the divorce had been granted for adultery. In 1864 it was provided by law that even in cases of divorce decreed for adultery, the guilty party might be allowed to remarry after three years, unless actually tried and convicted of the above crime.

The Acts of 1873 authorized the court to allow any person, against whom a divorce had been granted, to marry; but by a statute passed in 1881 two years must have elapsed from the time of the entry of the final decree of divorce, before the guilty party can again contract marriage. At the expiration of this period, however, it is not necessary to petition the court.

The foregoing summary of the different legislative enactments shows that there are now nine separate causes for which the Supreme Judicial Court of the Commonwealth may grant divorce from the bonds of matrimony. These causes are as follows:—

Adultery. Acts of 1786.

Impotency. Acts of 1786.

Sentence to imprisonment at hard labor for five years or more. Acts of 1836; the minimum term being first seven years, but reduced to five years in 1860.

Desertion for three consecutive years next prior to the filing of the libel. Acts of 1810; limited divorce being permitted to the wife, when utterly deserted by her husband. The Acts of 1836 permitted it to either party for utter desertion. That of 1838 authorized full divorce to the innocent party for desertion, which had continued for five consecutive years. That of 1857 decreed that either party might be granted a divorce, provided that, when sued for by the deserting party, it must be shown that the desertion was caused by extreme cruelty; or, in the case of the wife, by neglect on the part of the husband to make proper provision for her maintenance. The Acts of 1873 reduced the period of desertion from five to three years.

Separation without consent, refusal to cohabit, and union for three years with a religious sect or society holding the relation of husband and wife unlawful. Acts of 1850. The language of the present statute is practically the same as that originally passed.

Extreme cruelty. Acts of 1786, — being the one cause for which limited divorce might be granted. By the Statute of 1870, which prohibited divorce from bed and board, it became a cause for absolute divorce.

Gross and confirmed habits of intoxication. Acts of 1860, — being a cause for limited divorce only, and provided that the habit had been contracted after marriage. By the Statute of 1870 it became a cause for full divorce in the same form. The Statute of 1873 repealed the proviso.

Cruel and abusive treatment. Acts of 1860. By this enactment it was a cause for limited divorce only, but became one for full divorce in 1870.

Neglect to provide. Acts of 1810, — appearing as a cause for limited divorce. In 1870 it was made a cause for full divorce. This method is open to women only.

The following tables show the number of divorces granted during the past twenty years, by counties and statute causes, together with a State recapitulation, by years, counties and statute causes. It will be observed that no divorces have been granted for union with a religious sect, holding the relation of husband and wife unlawful. The sudden variations noticeable in certain years are mostly due to the changes in the laws, although the increase in the number of divorces granted for adultery, in 1866, is to be explained undoubtedly by its greater prevalence during the war period.

TABLE 2. — *Divorces Granted, by Years and Statute Causes. — Twenty Years.*
BARNSTABLE COUNTY.

YEARS.	ADULTERY.			DESERTION.			INTOXICATION.			EXTREME CRUELTY.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1864.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1865.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1866.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1867.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1868.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1869.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1870.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1871.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1872.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1873.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1874.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1875.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1876.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1877.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1878.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1879.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1880.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1881.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1882.	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
Totals.	28	26	54	30	70	100	1	1	2	1	1	2	58	102	160

TABLE 3. — *Divorces Granted, by Years and Statute Causes. — Twenty Years.*

BERKSHIRE COUNTY.

YEARS.	ADULTERY.			DESERTION.			INTOXICATION.			EXTREME CRUELTY.			CRUEL AND ABUSIVE TREATMENT.			NEGLECT TO PROVIDE.			IMPRISONMENT.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863.	1	6	7	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1864.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1865.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1866.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1867.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1868.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1869.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1870.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1871.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1872.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1873.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1874.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1875.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1876.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1877.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1878.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1879.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1880.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1881.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
1882.	1	4	5	1	3	4	1	1	2	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1
Totals,	48	93	141	46	88	134	1	15	16	19	19	13	13	13	8	8	1	1	1	4	5	96	240	336

TABLE 4. — *Divorces Granted, by Years and Statute Causes. — Twenty Years.*

BRISTOL COUNTY.

YEARS.	ADULTERY.			DESERTION.			INTOXICATION.			EXTREME CHURLITY.			CRUEL AND ABUSIVE TREATMENT.			NEGLECT TO PROVIDE.			IMPRISONMENT.			IMPOTENCY.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863.	4	3	7	1	5	6	1	2	3	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1864.	10	4	14	2	7	9	1	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1865.	13	6	19	7	14	21	7	18	25	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1866.	1	8	9	1	3	4	1	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1867.	1	8	9	1	3	4	1	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1868.	4	14	18	2	9	11	2	9	11	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1869.	10	10	20	9	12	21	9	12	21	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1870.	8	10	18	9	12	21	9	12	21	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1871.	3	6	9	4	9	13	4	9	13	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1872.	5	6	11	6	10	16	6	10	16	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1873.	5	7	12	6	10	16	6	10	16	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1874.	9	4	13	7	18	25	7	18	25	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1875.	9	5	14	8	11	19	8	11	19	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1876.	6	5	11	7	10	17	7	10	17	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1877.	3	8	11	11	14	25	11	14	25	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1878.	7	14	21	5	8	13	5	8	13	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1879.	11	5	16	6	9	15	6	9	15	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1880.	7	12	19	13	17	30	7	13	20	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1881.	6	9	15	10	13	23	6	10	16	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1882.	6	9	15	10	13	23	6	10	16	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Totals.	138	138	276	108	187	295	3	35	38	1	39	39	33	33	66	15	15	30	2	2	4	1	1	2	250	450	700

TABLE 5. — *Divorces Granted, by Years and Statute Causes. — Twenty Years.*
 DUKES AND NANTUCKET COUNTIES.

YEARS.	ADULTERY.			DESERTION.			INTOXICATION.			EXTREME CRUELTY.			CRUEL AND ABUSIVE TREATMENT.			NEGLECT TO PROVIDE.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863,	1	1	2	1	2	3	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1864,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1865,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1866,	2	1	3	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1867,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1868,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1869,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1870,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1871,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1872,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1873,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1874,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1875,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1876,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1877,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1878,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1879,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1880,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1881,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
1882,	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
Totals,	8	4	12	8	17	25	—	4	4	8	3	3	—	2	2	4	3	3	16	32	48

TABLE 6. — *Divorces Granted, by Years and Statute Causes. — Twenty Years.*
ESSEX COUNTY.

YEARS.	ADULTERY.			DESERTION.			INTOXICA- TION.			EXTREME CRUELTY.			CRUEL AND ABU- SIVE TREATMENT.			NEGLECT TO PROVIDE.			IMPRISON- MENT.			IMPOTENCY.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863.	5	9	10	1	5	6	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1864.	9	12	21	3	11	15	4	11	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1865.	14	6	20	3	11	14	4	11	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1866.	11	13	24	4	3	7	3	11	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1867.	11	17	28	2	9	11	2	9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1868.	9	19	28	6	6	12	6	6	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1869.	6	12	18	6	6	15	6	6	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1870.	20	12	32	8	15	23	8	15	1	5	5	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1871.	12	20	32	9	17	26	2	17	1	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1872.	14	12	26	11	21	32	9	26	1	8	8	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1873.	9	17	26	11	21	32	9	26	1	8	8	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1874.	10	8	18	19	26	45	19	26	1	11	11	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1875.	15	10	25	21	19	40	18	19	1	3	3	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1876.	7	9	16	14	22	36	14	22	1	8	8	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1877.	16	8	24	16	25	41	16	25	1	16	16	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1878.	8	8	16	16	18	34	16	18	1	7	7	1	7	7	1	7	7	1	7	7	1	7	7	1	7	7	1
1879.	11	10	21	11	26	37	11	26	1	7	7	1	7	7	1	7	7	1	7	7	1	7	7	1	7	7	1
1880.	16	10	26	10	35	45	10	35	1	11	11	1	11	11	1	11	11	1	11	11	1	11	11	1	11	11	1
1881.	8	8	16	19	18	37	8	19	1	2	2	1	6	6	1	6	6	1	6	6	1	6	6	1	6	6	1
1882.	4	11	15	9	40	49	9	40	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Totals.	212	227	439	191	353	544	3	121	124	85	85	37	37	37	24	24	24	6	6	6	1	1	1	2	407	854	1,261

TABLE 7. — *Divorces Granted, by Years and Statute Causes, — Twenty Years.*
FRANKLIN COUNTY.

YEARS.	ADULTERY.			DESERTION.			INTOXICATION.			EXTREME CRUELTY.			CRUEL AND ABUSIVE TREATMENT.			IMPRISONMENT.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1864,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1865,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1866,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1867,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1868,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1869,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1870,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1871,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1872,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1873,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1874,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1875,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1876,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1877,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1878,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1879,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1880,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1881,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
1882,	1	1	2	4	3	7	1	1	2	1	1	2	1	1	2	5	3	8	5	3	8
Totals,	20	43	72	28	39	67	1	3	3	4	4	4	—	4	4	67	97	154	67	97	154

TABLE 8. — *Divorces Granted, by Years and Statute Causes. — Twenty Years.*
HAMPDEN COUNTY.

YEARS.	ADULTERY.			DESERTION.			INTOXICA- TION.			EXTREME CRUELTY.			CRUEL AND ABU- SIVE TREATMENT.			NEGLECT TO PROVIDE.			IMPRISON- MENT.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863.	5	2	7	3	5	8	1	1	2	1	1	2	1	1	2	1	1	2	2	2	4	8	11	19
1864.	5	5	10	3	8	11	1	1	2	1	1	2	1	1	2	1	1	2	2	2	4	6	10	16
1865.	5	11	16	6	7	13	1	1	2	1	1	2	1	1	2	1	1	2	16	31	47	14	22	36
1866.	8	10	18	6	7	13	1	1	2	1	1	2	1	1	2	1	1	2	14	20	34	5	22	27
1867.	8	15	23	6	4	10	1	1	2	1	1	2	1	1	2	1	1	2	8	15	23	14	16	30
1868.	4	5	9	3	3	6	1	1	2	1	1	2	1	1	2	1	1	2	5	11	16	1	11	20
1869.	4	5	9	1	3	4	1	1	2	1	1	2	1	1	2	1	1	2	10	14	24	10	14	24
1870.	8	9	17	1	3	4	1	1	2	1	1	2	1	1	2	1	1	2	2	13	15	2	17	19
1871.	1	6	7	2	7	9	1	1	2	1	1	2	1	1	2	1	1	2	2	2	4	2	17	19
1872.	1	6	7	1	4	5	1	1	2	1	1	2	1	1	2	1	1	2	16	31	47	16	31	47
1873.	1	11	12	1	10	11	1	1	2	1	1	2	1	1	2	1	1	2	12	28	40	7	24	31
1874.	6	9	15	4	10	14	1	1	2	1	1	2	1	1	2	1	1	2	7	24	31	7	24	31
1875.	3	5	8	2	6	8	1	1	2	1	1	2	1	1	2	1	1	2	29	29	58	14	39	53
1876.	3	6	9	4	7	11	1	1	2	1	1	2	1	1	2	1	1	2	14	29	43	14	39	53
1877.	3	11	14	2	14	16	1	1	2	1	1	2	1	1	2	1	1	2	12	29	41	11	30	41
1878.	3	13	16	6	10	16	1	1	2	1	1	2	1	1	2	1	1	2	11	30	41	11	30	41
1879.	5	9	14	6	8	14	1	1	2	1	1	2	1	1	2	1	1	2	11	11	22	13	24	37
1880.	5	2	7	1	3	4	1	1	2	1	1	2	1	1	2	1	1	2	13	24	37	13	24	37
1881.	9	2	11	4	7	11	1	1	2	1	1	2	1	1	2	1	1	2	13	24	37	13	24	37
1882.	9	15	24	4	7	11	1	1	2	1	1	2	1	1	2	1	1	2	13	24	37	13	24	37
Totals.	88	113	201	67	145	212	59	59	118	39	39	78	22	22	44	20	20	40	155	400	555	155	400	555

TABLE 9. — *Divorces Granted, by Years and Statute Causes. — Twenty Years.*

HAMPSHIRE COUNTY.

YEARS.	ADULTERY.			DESERTION.			INTOXICATION.			EXTREME CRUELTY.			CRUEL AND ABU- SIVE TREATMENT.			NEGLECT TO PROVIDE.			TOTALS.		
	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.	Males.	Females.	Both Sexes.
1863,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1864,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1865,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1866,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1867,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1868,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1869,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1870,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1871,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1872,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1873,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1874,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1875,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1876,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1877,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1878,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1879,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1880,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1881,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
1882,	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Totals,	25	31	56	46	43	89	3	6	9	..	11	11	..	14	14	..	3	3	74	108	182

While the population of the State is estimated to have increased 669,219, or 53·4 per cent. during the past twenty years, and the marriage rate but 1·04 per thousand, it is a startling fact that the ratio of persons divorced to the population has advanced, in the same period, from 1 in 3,025 to 1 in 1,862; and that of divorces to marriages from 1 in 52·5 to 1 in 34·3, or a little more than one-half.

Taking the whole twenty years into consideration, the average ratio for the State is found to be one divorce to every thirty-three and one-half marriages. For the last four years this ratio is one divorce to every thirty-one marriages, as compared with one to twenty-three in the previous four years. Whether this decrease is illusory must be proved by the statistics of future periods. The years 1873, 1881 and 1882 show the greatest number of marriages for the term under review, while the average ratio for these years is 1 divorce to 37·2 marriages, or a gain of 1 in 3·7 in comparison with the State as a whole. When compared with the average of the seven years between 1873 and 1882, the difference is found to be 1 in 13·4 in favor of the three-year periods. The smallest ratio of divorces in comparison with the marriages, since 1872, occurred in the year 1880.

Upon an examination of the statistics given in Table 19, it will be noticed that, while the average ratio of divorces to marriages, for twenty years, is 1 in 33·5 for the State, that for Norfolk is but 1 in 62·6. This county is thus placed at the head of the list in its recognition of the permanency of the marriage vows. On the contrary, the ratio for Dukes and Nantucket, taken together, which is the lowest of all the counties, would seem to indicate that the contract of marriage is held in comparatively light esteem by them. The other counties take rank in the following order:—Hampshire, 1 to 41·5; Plymouth, 1 to 39; Barnstable, 1 to 36·5; Franklin, 1 to 36·4; Middlesex, 1 to 33; Suffolk, 1 to 32·6; Essex, 1 to 32; Worcester, 1 to 31·9; Bristol, 1 to 31·1; Hampden, 1 to 30·7; Berkshire, 1 to 30. In other words, the proportion of divorces to marriages is nearly twice as great among the city population of Suffolk as among the town population of Norfolk; although the Rural and Cape counties of Berkshire, Hampden, Bristol and Dukes and Nantucket make a less favorable showing in this

respect than the Metropolitan county of Suffolk. The three divisions, compared, give average ratios of 1 to 39·3 for the Cape, 1 to 34·6 for the Rural, and 1 to 32·3 for the Metropolitan counties — thus showing but a slight difference in favor of the smaller towns of the Rural district over the more thickly populated cities and towns of the Metropolitan; but a much greater difference in favor of the Cape division.

If a still further study is made of the statistics by an analysis of Table 20, it will be seen that, for the cause of adultery, there were fewer divorces decreed in proportion to the number of marriages during the twenty-year period in Norfolk than in any other county of the Commonwealth, and the greatest number in Berkshire. The other counties take rank as follows:—Plymouth, with 1 divorce to 176·9 marriages; Hampshire, 1 to 134·9; Dukes and Nantucket, 1 to 113·6; Barnstable, 1 to 108·3; Worcester, 1 to 100; Essex, 1 to 92·1; Middlesex, 1 to 86·1; Hampden, 1 to 84·9; Suffolk, 1 to 83·5; Bristol, 1 to 78·9; Franklin, 1 to 77·5. For desertion, Norfolk makes the most favorable showing, as it does also under the head of intoxication. In relation to the former cause, Dukes and Nantucket have the highest ratio of divorces to marriages (one to 54·6), or more than twice as great as that for Norfolk; while Suffolk holds the third place, with Middlesex fifth in order, and Essex eighth. The Cape counties, as a rule, make the least favorable showing — a fact which may possibly be due to the more maritime character of their population. Hampden has the worst record for intoxication and extreme cruelty, while Franklin makes by far the best showing for both these causes. The ratio of Dukes and Nantucket, Essex, and Suffolk are above that of the State for intoxication. Norfolk presents the smallest proportion of divorces decreed for all the other causes combined, and Plymouth the largest.

Tables 21 and 22 show in detail the statistics for 1882.

TABLE 21. — *Divorces Granted, by Counties and Statute Causes — 1882.*

COUNTIES.	ADULTERY.			DESERTION.			INTOXICATION.			EXTREME CRUELTY.			CRUEL AND ABUSIVE TREATMENT.			NEGLECT TO PROVIDE.			IMPRISONMENT.			IMPOTENCY.			TOTALS.		
	Males.		Both Sexes.	Males.		Females.	Males.		Females.	Males.		Females.	Males.		Females.	Males.		Females.	Males.		Females.	Males.		Females.	Males.		Females.
Barnstable,	—	1	1	—	4	4	—	—	—	—	2	2	—	—	—	—	—	—	—	—	—	—	—	—	—	—	7
Berkshire,	2	4	6	2	11	13	—	3	3	—	2	2	—	—	—	—	—	—	—	—	—	—	—	—	4	20	24
Bristol,	6	9	15	10	13	23	—	8	8	—	4	4	—	3	3	—	1	1	—	1	1	—	—	—	16	39	55
Dukes and Nantucket,	—	—	—	1	2	3	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	4	5
Essex,	4	11	15	9	40	49	1	11	12	—	2	2	—	6	6	—	2	2	—	1	1	—	—	—	14	73	87
Franklin,	—	—	—	4	3	7	—	—	—	—	—	—	—	1	1	—	—	—	—	—	—	—	—	—	4	4	8
Hampden,	9	6	15	4	7	11	—	7	7	—	3	3	—	—	—	—	1	1	—	—	—	—	—	—	13	24	37
Hampshire,	1	1	2	1	1	2	2	—	2	—	—	2	2	—	—	—	—	—	—	—	—	—	—	—	4	4	8
Middlesex,	6	12	18	14	18	32	1	6	7	—	2	2	—	—	—	—	—	—	—	—	—	—	—	—	21	38	59
Norfolk,	3	—	3	2	5	7	—	1	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	5	8	13
Plymouth,	—	1	1	3	10	13	—	2	2	—	—	—	—	6	6	—	—	—	1	1	—	—	—	—	3	20	23
Suffolk,	7	13	20	14	40	54	1	17	18	—	5	5	—	5	5	—	—	—	—	—	—	—	—	—	21	81	102
Worcester,	12	9	21	12	29	41	—	13	13	—	5	5	—	3	3	—	4	4	—	—	—	—	—	—	24	63	87
The State,	50	67	117	76	183	259	5	69	74	—	28	28	—	26	26	—	8	8	—	3	3	—	—	—	130	385	515

TABLE 22. — *Ratio of Divorces to Marriages, by Counties. — 1882.*

COUNTIES.	Number of Marriages.	Number of Divorces.	Ratio of Divorces to Marriages.
Barnstable,	233	7	1 to 33·3
Berkshire,	545	24	1 to 22·7
Bristol,	1,610	55	1 to 29·1
Dukes and Nantucket,	65	5	1 to 13·0
Essex,	2,511	87	1 to 28·8
Franklin,	319	8	1 to 39·8
Hampden,	1,122	37	1 to 30·3
Hampshire,	389	8	1 to 48·6
Middlesex,	3,147	59	1 to 53·3
Norfolk,	708	13	1 to 54·4
Plymouth,	668	23	1 to 29·0
Suffolk,	4,283	102	1 to 41·9
Worcester,	2,084	87	1 to 23·9
The State,	17,684	515	1 to 34·3

But little information can be derived from a comparison between the number of divorces granted in 1882 and the population, since the latter can only be approximated. Basing the presumable relative rank of the counties as to population, however, upon that which they held by the census of 1880, it appears that Suffolk has the first rank both in the number of its inhabitants and the divorces; Middlesex stands second in population and fourth in divorces; Essex third in population and second in divorces; Worcester fourth in population and second also in divorces; Bristol fifth, both in population and in divorces; Hampden sixth in population and likewise in divorces; Norfolk seventh in population and ninth in divorces; Plymouth eighth in both; Berkshire ninth in population and seventh in divorces; Hampshire tenth in both; Franklin eleventh in population and tenth in divorces; Barnstable and Dukes and Nantucket twelfth and thirteenth respectively both in population and divorces. It would thus seem that the relative number of divorces in the various counties bears a tolerably accurate proportion to the population.

The percentage of divorces granted for adultery in 1882 to the whole number is 22·7 per cent., and for desertion 50·2 per cent., an aggregate of 72·9 for the two causes. Seventy-four

and seven-tenths per cent. of the total number of divorces were granted to females; 57·2 for adultery alone, and 72·5 for desertion. While the number of divorces in 1882 was but four more than the average for the previous three years, adultery, as a cause, increased thirty per cent. over this average, as compared with a decrease in the number of marriages of twenty-eight and one-tenth per cent., and an increase in their estimated rates of one and seven-tenths per cent. For desertion the increase was six and six-tenths per cent., and for intoxication twenty-eight per cent., whereas extreme cruelty remained stationary, and cruel and abusive treatment decreased eighty-seven and five-tenths per cent.

In respect to the ratio of divorces to marriages (Table 22), that for the State, as a whole, is 1 in 34·3; while Barnstable County has a record of 1 in 13, or more than four times greater than the proportion for Norfolk, which is 1 in 54·4. Suffolk stands relatively very high in the list, with one divorce only to every forty-one and nine-tenths marriages. The remaining counties take rank as follows: Middlesex, 1 to 53·3; Hampshire, 1 to 48·6; Franklin, 1 to 39·8; Berkshire, 1 to 33·3; Hampden, 1 to 30·3; Bristol, 1 to 29·1; Plymouth, 1 to 29; Essex, 1 to 28·8; Worcester, 1 to 23·9; Berkshire, 1 to 22·7.

LENGTH OF MARRIED LIFE OF LIBELLANTS.

As an aid to the practical study of the causes leading to divorce, it will be of interest to briefly review the statistics, in regard to the number of years which the libellants have been married before seeking a judicial separation from the bonds of matrimony. It will be necessary, however, to confine this review to the record of the last four years, since previous to 1879 such returns were not made. Taking the whole period between 1879 and 1882 into consideration, it appears that an average of 35·2 per cent. of the petitioners had been married only between five and ten years, and 35 per cent. between ten and twenty years.

An aggregate of 417 libellants had been married from one to five years; 289 from twenty to thirty; 83 over thirty; 21 under one year; 16 under six months. Of the divorces prayed for on the ground of adultery, the largest proportion was after

a married life of between five and ten years, while for desertion the ratio was the highest between ten and twenty years.

As length of married life 10 years
As the statistics of each of these four years furnish very nearly similar results, it will be necessary to refer only to those of 1882, as an example of the others. In this year the average length of married life of the libellants was, for all causes, 10·95 years. For the cause of adultery, it was 9·86 years; for neglect to provide, 10·02; for intoxication, 10·70; for cruel and abusive treatment, 10·85; for desertion, 11·41; for extreme cruelty, 12·02; for imprisonment, 17·05. Thirty-six and one-tenth per cent. of the petitioners had been married from five to ten years; 35·9 per cent. from ten to twenty; 93 libellants between one and five; 72 between twenty and thirty; 15 over thirty; 6 under one year; 3 under six months. Of the total number of suits in which adultery was alleged as a cause, 36·8 per cent. were brought after a married life of from ten to twenty years; 34·2 per cent. from five to ten; in 29, marriage had continued between one and five years; in 8 between twenty and thirty; in 3 over thirty; in 2 under one year; in 2 under six months.

In the cases in which desertion was the alleged cause, 37·4 per cent. of the parties to the suit had been married from ten to twenty years; 36·5 per cent. from five to ten; 38 of them from twenty to thirty; 37 from one to five; 8 over thirty.

Of the suits brought within the first five years of married life for alleged adultery, 57·4 per cent. were upon the petition of the husband, and 42·4 per cent. upon that of the wife. On the contrary, of those prayed for after five years, 42 per cent. were sought by the former, and 58 per cent. by the latter. For alleged desertion, 32·3 per cent. of the libellants were males, and 67·7 per cent. females.

REMARKS ON DIVORCE.

After a careful consideration of the foregoing statistics, several evident facts stand out in startling prominence. That the number of divorces in Massachusetts is excessive, and that this number has increased very largely within the past twenty years, must be apparent to all who have studied the subject. It can, or rather should be no consolation to us, that this Common-

wealth is better off in this respect than its sister States of Vermont, Rhode Island and Connecticut,* even though a comparison between them was not misleading, on account of the difference in their laws authorizing divorce. The principle of *tu quoque* is a dangerous one upon which to rest in the presence of a growing social evil; and hence, instead of pointing to the records of other States as a flattering unction for our own shortcomings, it is incumbent upon us to seek the causes which operate in this State to produce such grave results, in order that remedies may be applied, if such become possible.

That divorce laws are wise, both in their conception and enactment, there can be but little doubt, although by certain earnest observers this statement has been denied. To oblige a woman, however,—and it has been shown that nearly seventy per cent. of the divorces in Massachusetts are granted to the wife—to submit to the brutalities of a cruel or drunken husband, or to his profligacy, without hope of relief; or to compel a husband to continue a contract in the face of the many marital wrongs, which the records show are committed by the wife, would certainly be a legal cruelty, particularly when by a judicial separation an opportunity may be offered for future happiness. While, however, laws having for their object a correction of unfortunate evils are necessary, care should always be taken that every legislative safeguard is placed around a marriage contract, in order to prevent a hasty or unjust abrogation of it. Whether the laws of this State have made a divorce too easy of attainment; whether, for instance, the enactment relating to the subsequent marriage of the guilty party is any improvement over that originally passed, which forbade such a marriage during the lifetime of the innocent party, is not a question to be discussed in a report of this nature. Of all the changes in the Divorce Acts, one at least deserves more than a passing notice; viz., that relating to desertion as a cause, which, in opening it to the deserting party, provides that it shall be only so granted, when it has been proved that the desertion

* The proportion for Massachusetts for twenty years is one divorce to thirty-three and one-half marriages, while in Vermont for the ten years preceding 1879 it was one to seventeen, in Rhode Island below one to fourteen, and in Connecticut below one to eleven. For 1880 the ratio in Vermont was one in twenty; in Rhode Island and Connecticut, for 1881, one to about ten and one-half, and one to sixteen and two-thirds respectively.

is on account of extreme cruelty on the part of the one deserted. This proviso prevents groundless desertion, which in some other States too often takes place with the sole object of marrying another. On the whole the divorce laws of this Commonwealth have kept pace with the improved understanding of the social condition of the people, and have been wisely framed to meet the many causes which exist in modern life to break up the domestic ties and relations.

As easy as it is to point to the great prevalence of the causes for which divorces are granted, it is much more difficult to explain the underlying evils which lead to them. Whatever these conditions may be, and however they may have been brought about, we must, strangely enough, look mainly to our native population for the explanation. For while it is certain that the older a community grows the more crime of all sorts becomes common, and one of their results, as seen in the records of the divorce courts, more frequently noticed, yet that our greatly increased foreign population cannot be held responsible is proved by the fact that the greater proportion of them belong to a Church, which forbids divorce from the bonds of matrimony. Various theories have been advanced by writers upon this subject to explain the great prevalence of divorce; but it seems most probable that the chief cause must be sought in the effect which modern civilization has in producing an individualism. A late observer has very truly said that family ties must have their foundation in social and domestic affections, guided by intellect and cultivated by moral sentiments. Whether modern life leads to this is a question which it concerns us to ponder well. The keynote to the answer seems to have been sounded in the lesson to be learned from the statistics of deaths from brain diseases, which have been given in another portion of this report. The great increase of one hundred and forty-four and nine-tenths per cent. in the mortality from these disorders during the past twenty-three years can have but one solution,—that there is a rapidly growing tendency to make the business of life one of paramount and absorbing importance, and to sacrifice domestic relations and home affections to the American Moloch of unrest and unceasing mental activity. This truth does not apply to the husband alone; the wife must assume some of the responsibility.

In fact, some writers have gone so far as to lay at her door many of the mistakes which tend to strain the ties, which should centralize the family within the home. This seems unjust, however, in view of the records. But that the wife, with the modern desire to have a mission, the fulfilment of which so often makes the domestic duties and the claims of matrimony irksome to her, does sometimes become too individualized for the preservation of the social affections, no one who has watched carefully the onward march of our nineteenth century ideas can fail to recognize. It is by no means intended to deprecate woman's advancement in any direction, but to call attention to the fact that there is a tendency in this advancement to subordinate the central affections, which in so many different ways make of the house a home, to a purely intellectual development. The intellect, both on the part of the husband and the wife, must guide, but not control these affections, if many of the causes which lead to divorce are to be averted.

Again, it is a serious question whether the present system of education does not tend to foster a growth which will eventually lead to individualism; or rather, perhaps, whether it does not neglect to cultivate ideas which will result in a centralism of home ties. Without entering into a discussion of this subject, as not coming within the scope of this review, it may be proper to suggest, that there seems to be a tendency on the part of ~~the~~ modern educators to develop the head at the expense of the heart, and to confine the course of study within such a limit, that a broad expansion of mind becomes almost an impossibility.

The opposite extremes of luxury and poverty — and by the latter is meant not squalor, but the lack of means — conditions of society which become more marked as communities grow older, must be considered important factors in the production of this great social evil. Both tend to the same individualism — the former by its too often mistaking the external semblance of domestic life for its true realization, the shadow for the reality; and the latter, by the sacrifice which is so frequently made in the struggle for existence. Self-absorption, whether in the pursuit of wealth, of pleasure, or of the bare means of living; the anxieties and cares which modern civilization largely aug-

ments, have a tendency to prevent inter-communication, and to alienate the affections. Let these domestic errors, without mutual confidence and mutual concessions, gain a foothold, and married happiness becomes a wreck, from which it is but a step to desertion and the divorce courts.

A still further failure in the social condition of this country, and the remark applies equally as well to Massachusetts, is to be found in the lack of simple, healthy amusements for the masses, which amusements have a tendency to afford a much-needed relief from care, and serve to elevate the social condition by counteracting the narrowing influences of constant work. This fact is nowhere more apparent than in the country districts, in which a life, monotonous from the lack of social recreation and enjoyment, often seeks relief in the many causes which lead to divorce.

That the domestic ills which result in legal separation are progressive, is abundantly proved by the tables showing the length of married life of the libellants. It has been seen that the largest number of suits are brought after a married life of between five and twenty years, while the average length of this life in 1882 was ten and ninety-five one-hundredths years. Hence conviction is forced upon us that the causes, which affect marital happiness, are generally slow in their action and development, and that the domestic ties are strained for a long time before they are finally broken.

If the existing evils have been correctly indicated in the preceding paragraphs, what are the proper remedies for them? This is one of the most difficult of the social problems to solve; since it can find its elucidation only in a radical change in many of the usages of modern life. Legislative enactments can accomplish nothing in this direction, beyond protecting society, and the evils themselves can only suggest their own cures. It must be left to educators, to social scientists, to the church, and by no means last to parents, to apply the relief. Cultivate the domestic affections in the young, by making home attractive, no matter how humble it may be; provide amusements and instruction for the masses on all days of the week, particularly on Sunday, which is too often their only holiday; multiply coffee-houses and places for cheerful recreation, to check the spread of intemperance; encourage the promotion

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